

TARJA SEPPÄ

# **Responsibility to Protect as a United Nations Security Council Practice in South Sudan**



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Responsibility to Protect  
as a United Nations  
Security Council Practice  
in South Sudan

ACADEMIC DISSERTATION

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Tampere, Pyynikki in May 2019

Tarja Seppä

# Abstract

This doctoral dissertation studies the concept of responsibility to protect (R2P), especially in the context of the South Sudan conflict. R2P is a political concept, developed at the UN and United Nations Security Council (UNSC), which deals with preventing and responding to genocide, war crimes, crimes against humanity, and ethnic cleansing. These are atrocity crimes as defined in the Rome Statute of International Criminal Court (ICC). R2P is about human rights and human rights violations, and although it is a political concept, it has legal consequences.

Normative development is one of the UN's main aims. The UN develops norms and standards according to its Charter and to implement its Charter, thus contributing to its fundamental aim of maintaining international peace and security. R2P was accepted at the UN World Summit in 2005, an important event in the international consensus on moral and ethical sentiment on mass atrocities. In 2009, the UN Secretary General developed a three-pillar approach for implementing R2P, in which Pillar I refers to the "protection responsibilities of the State", Pillar II refers to "international assistance and capacity-building" and Pillar III to "timely and decisive response of international community". These pillars are discursive practices of R2P.

However, the UN and UNSC have not been able to do well in situations of grave human rights violations in armed conflicts, although the international community has a developed system of practices for mass atrocity prevention, namely R2P. How could this paradox be perceived in the South Sudan conflict situation? When discussing the UN and UNSC, it is good to see their long-term developments and achievements instead of only focusing on their failures and catastrophes.

My research question regards how UN and UNSC practices, both discursive and social practices, constitute R2P and how they may change or maintain primary institutions – human rights, sovereignty, great power management – of international society and thus affect the nature of international society. The first part of the question refers to the UNSC's role in preventing and responding to mass atrocities, and the second part refers to the role

of secondary institutions, the UN, UNSC and ICC, in the English School (ES) theory of international society and institutional change. The question especially concerns how these practices of mass atrocity prevention create and are created by the primary institutions of international society, the mentioned sovereignty, human rights and great power management, which are at the same time basic principles of the R2P.

The theoretical framework is constructed with the help of the ES of international relations and constructivist and ethical considerations. Ethical considerations are significant and are discussed in terms of pluralism and solidarism, ES concepts which define different moral frames and possibilities for moral action. The methodological approach proceeds from “deeds to words”, meaning how practices construct R2P. It is important to consider UNSC practices for preventing mass atrocities in South Sudan relative to the normative framework R2P has created and thus being able to analyse how the UNSC may change or maintain R2P and whether these practices could be ethically considered as R2P competent. Ethical considerations and reasoning provide criteria for analysing political debates at the UNSC. The primary research material consists of relevant UN, UNSC, General Assembly, Human Rights Council, African Union, United Nations Mission in South Sudan (UNMISS) resolutions, documents, reports, and statements concerning South Sudan during the period of the study 2011- to 2015.

Based on the analysis of UNSC practices in South Sudan to prevent and respond to mass atrocities in practices of *state-building*, *protection of civilians*, *sanctions regime*, and *peace agreement*, it is suggested as a contribution of this study that the mandates of the UNMISS were changing as a response to changes in the South Sudan conflict and respective UNSC practices. All pillars of R2P were used. Thus, the UNSC and the ICC constituted R2P, and as practices, reflected both pluralist and solidarist moral frames. Further, it could be suggested that these changes in practices not only affected R2P, but also had effects on primary institutions of international society, the relation between human rights, sovereignty and great power management. At times, human rights superseded sovereignty, with the help of great power management, thus affecting the nature of international society.

There were new practices to protect civilians; the UNMISS opened its base to fleeing civilians, and there were new problems as the UNSC did not want to protect perpetrators (the South Sudan government), and it changed the UNMISS mandate not to do so. These were ethically competent actions. However, the UNSC faced limits, as it could not refer the South Sudan case to the ICC, although mass atrocities were committed in South Sudan by *all*, and it was discussed openly at the UNSC. Sovereignty superseded human rights, but impunity is no longer intact in international society. The UNMISS mandates were “impossible mandates”, and capacities and obligations were not in balance. This in part may explain why and how UN peace operations cannot meet the expectations of international community. To conclude, it is suggested that pluralism and solidarism exist at the same time in international society, thus making the UNSC’s working and the role of secondary institutions in institutional continuity and change more understandable.



## Tiivistelmä

Tämä tutkimus käsittelee suojeluvastuun periaatetta, jota analysoidaan erityisesti Etelä-Sudanin konfliktin kontekstissa. YK:ssa ja YK:n turvallisuusneuvostossa kehitetty suojeluvastuu on poliittinen käsite, jolla on oikeudellisia seuraamuksia. Suojeluvastuussa on kyse ihmisoikeuksien toteutumisesta, joita tarkastellaan neljää vakavaa ihmisoikeusrikkomusta vasten: kansanmurha, sotarikokset, rikokset ihmisyyttä vastaan sekä etniset puhdistukset. Nämä rikkomukset on edelleen määriteltä kansainvälisen rikostuomioistuimen Rooman perussäännössä.

YK:n keskeisiä tavoitteita on normatiivisen kehityksen edistäminen sekä kansainvälisen rauhan ja turvallisuuden ylläpitäminen sen peruskirjan mukaisesti. Suojeluvastuun periaate hyväksyttiin YK:n yleiskokouksen huippukokouksessa vuonna 2005. Tämä oli merkittävä poliittinen, moraalinen ja eettinen kannanotto suhteessa kaikkein vakaviimpiin ihmisoikeusrikkomuksiin. YK:n pääsihteeri laati vuonna 2009 kolmen pilarin strategian suojeluvastuun toteuttamiseksi. Ensimmäinen pilari viittaa valtioiden vastuuseen suojella väestöään; toinen pilari puolestaan viittaa kansainvälisen yhteisön vastuuseen auttaa valtioita tässä tehtävässä ja kolmas pilari viittaa edelleen kansainvälisen yhteisön vastuuseen toimia oikea-aikaisesti ja päättäväisesti kyetäkseen suojelemaan väestöä mainituilta rikkomuksilta mikäli valtio itse ei ole siihen kykenevä. Nämä kolme pilaria käsitetään tässä tutkimuksessa suojeluvastuun diskursiivisiksi käytännöiksi.

YK ei ole kuitenkaan kyennyt suojelemaan siviiliväestöä aseellisissa konflikteissa erityisen tehokkaasti, vaikka suojeluvastuun käytäntöjen kautta siihen olisi mahdollisuus. Tätä ristiriitaa tarkastellaan tutkimuksessa Etelä-Sudanin konfliktin kautta. Sen lisäksi, että huomio kiinnittyy usein epäonnistumisiin suojeluvastuun periaatteen mukaisessa toiminnassa, tulisi YK:n ja turvallisuusneuvoston toimintaa tarkastella tässä yhteydessä myös niiden luoman normatiivisen muutoksen ja kehityksen kautta.

Tutkimuksessa selvitetään kuinka YK:n ja turvallisuusneuvoston diskursiiviset ja sosiaaliset käytännöt mahdollistavat suojeluvastuun ja kuinka nämä käytännöt muuttavat tai ylläpitävät kansainvälisen yhteisön primääri-instituutioita kuten ihmisoikeuksia, suve-

reniteettia ja suurvaltainstituutioita ja tätä kautta mahdollistavat kansainvälisen yhteisön muutosta. Ihmisoikeudet, suvereniteetti ja suurvaltainstituutio ymmärretään myös suojeluvastuun perusperiaatteiksi. Tutkimuskysymyksen ensimmäinen osa käsittelee YK:n ja turvallisuusneuvoston roolia kaikkein vakavimpien ihmisoikeusrikkomusten ehkäisemisessä ja niihin vastaamisessa. Toinen osa liittyy YK:n ja turvallisuusneuvoston sekä Kansainvälisen rikostuomioistuimen kaltaisten sekundääri-instituutioiden rooliin kansainvälisten suhteiden englantilaisen koulukunnan instituutioiden muutosta koskevassa teoreettisessa keskustelussa. Tutkimuksessa argumentoidaan että suojeluvastuun mahdollistamisella YK ja turvallisuusneuvosto myötävaikuttavat tavoitteidensa mukaisesti kansainväliseen rauhaan ja turvallisuuteen.

Tutkimuksen teoreettinen viitekehys rakentuu kansainvälisten suhteiden englantilaisen koulukunnan ja instituutioiden muutosta käsittelevän teoretisoinnin sekä konstruktivismin ja eettisten näkökohtien tarkastelun varaan. Eettiset näkökohdat huomioidaan erityisesti englantilaiseen koulukuntaan liitettyjen käsitteiden pluralismi ja solidarismi kautta. Tutkimuksen menetelmälliset suuntaviivat muodostuvat tavoista tarkastella turvallisuusneuvoston käytäntöjä suojeluvastuuta rakentavina käytäntöinä osana suojeluvastuun muodostamaa normatiivista viitekehystä. Lisäksi analyysissä hyödynnetään eettisen päättelyn kriteereitä, koska suojeluvastuukäytäntöjen tulisi olla eettisesti päteviä. Tutkimuksen primääriaineisto ajalta 2011–2015 muodostuu YK:n, turvallisuusneuvoston, yleiskokouksen, Ihmisoikeusneuvoston, Afrikan Unionin sekä YK:n rauhanturvaoperaation UNMISSin Etelä-Sudania koskevista päätöslauselmista, keskusteluista, dokumenteista, raporteista ja lausunnoista.

Analyysin perusteella turvallisuusneuvoston suojeluvastuukäytännöistä, jotka liittyivät valtion rakentumiseen, siviilien suojeluun, pakotteiden asettamiseen ja rauhansopimuksen saavuttamiseen, voidaan päätelminä esittää, että rauhanturvaoperaatio UNMISSin mandaatit muuttuivat Etelä-Sudanin konfliktin muuttuessa ja vastaavasti käytännöt muuttuivat. YK ja turvallisuusneuvosto mahdollistavat suojeluvastuun rakentumisen ja nämä käytännöt ilmentävät sekä pluralistisia että solidaristisia periaatteita. Voidaan esittää, että muutokset käytännöissä olivat merkityksellisiä sekä suojeluvastuun rakentumiselle että kansainvälisen yhteisön primääri-instituutioille. Ihmisoikeudet saattavat olla ensisijaisia suhteessa suvereniteettiin joidenkin käytäntöjen kohdalla ja tämä suurvaltainstituution myötävaikutuksella. Primääri- ja sekundääri-instituutiot ovat konstitutiivisessa suhteessa.

Analyysissa havaittiin myös joitakin uusia käytäntöjä. Esimerkiksi UNMISS avasi tukikohtansa pakeneville siviileille, mikä oli eettisesti oikea ratkaisu. Myös uusia ongelmatilanteita syntyi, koska turvallisuusneuvosto ei halunnut toiminnallaan tukea vakavia ihmisoikeusrikkomuksia tehneitä tahoja kuten Etelä-Sudanin hallitusta. Turvallisuusneuvosto ei kyennyt siirtämään Etelä-Sudanin tilannetta Kansainväliselle rikostuomioistuimelle, vaikka tehdyistä rikkomuksista keskusteltiin turvallisuusneuvoston kokouksissa. Suvereniteetti on ensisijainen suhteessa ihmisoikeuksiin, mutta kuitenkin niin että rauhansuhteiden periaate ei ole enää koskematon. Rauhanturvaoperaatio UNMISSin

mandaatit olivat myös varsin laajoja heijastellen Etelä-Sudanin konfliktin moninaisuutta, mutta ilman riittäviä resursseja. Tätä kautta voidaan osaltaan selittää sitä, miksi niin usein ajatellaan YK:n ja turvallisuusneuvoston epäonnistuneen tehtävissään.

Yhteenvetona voidaan esittää, että pluralismi ja solidarismi ilmenevät kansainvälisessä yhteisössä samanaikaisesti konstituoiden turvallisuusneuvoston toimintaa ja roolia kansainvälisen yhteisön institutionaalisessa kehityksessä, jatkuvuudessa ja muutoksessa.



## Abbreviations

ARCSS	Agreement of the Resolution on the Conflict in the Republic of South Sudan
AU	African Union
AUCISS	African Union Commission of Inquiry on South Sudan
AUHIP	African Union High Level Panel
AU PSC	African Union Peace and Security Council
CoH	Cessation of Hostilities
CPA	Comprehensive Peace Agreement
CTRH	Commission for Truth, Reconciliation and Healing
E10	Security Council elected members
ES	English School of International Relations
GoNU	Government of National Unity (Sudan)
GOSS/GoSS	Government of Southern Sudan
GRSS	Government of the Republic of South Sudan
HCSS	Hybrid Court for South Sudan
HRC	Human Rights Council
HRUF	Human Rights Up Front
ICISS	International Commission on Intervention and State Sovereignty
ICRC	International Committee of the Red Cross
IHL	International Humanitarian Law
IDP	Internally Displaced People
IGAD	Intergovernmental Authority on Development
MONUSCO	United Nations Organization Stabilization Mission in the DR of Congo
NCP	National Congress Party (Sudan)
OHCHR	Office of the High Commissioner of Human Rights

R-ARCSS	Revitalized Agreement on Resolution of the Conflict in the Republic of South Sudan
RN2V	Responsibility Not to Veto
R2P	Responsibility to Protect
RwP	Responsibility while Protecting
P5	Security Council permanent members
P3	Security Council permanent members United State – Great Britain – France
P2	Security Council permanent members China – Russia
S-5	Group of smaller countries at the UN – Costa Rica, Jordan, Liechtenstein, Singapore, Switzerland
SG	Secretary General
SOFA	Status-of-forces agreement (the UN/GOSS)
SPLM/A	Sudan People’s Liberation Movement/Army
SPLM/A-IO; SPLM/A(IO); SPLM/A I-O	Sudan People’s Liberation Army Opposition
SRSG	Special Representative of the Secretary-General
SSHRC	South Sudan Human Rights Commission
SSLM/A	South Sudan Liberation Movement/Army
SSNPS	South Sudan National police Force
SSPS	Southern Sudan Police Service
TGoNU	Transitional Government of National Unity
UCDP	Uppsala Conflict Data Program
UDHR	Universal Declaration of Human Rights
UNAMID	United Nations African Union Operation in Darfur
UNAMSIL	United Nations Mission in Sierra Leone
UNGA	United Nations General Assembly
UNISFA	United Nations Interim Security Force for Abyei
UNHRC	Office of the United Nations High Commissioner for Refugees
UNMIL	United Nations Mission in Liberia
UNMIS	United Nations Mission in Sudan
UNMISS	United Nations Mission in South Sudan
UNOCI	United Nations Operation in Côte d’Ivoire
UNSC	United Nations Security Council
WSOD	World Summit Outcome Dokument

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# 1 Introduction

In Chapter 1, the research question and theoretical framework of the study will be introduced, the method for analysing the research material will be discussed, and the structure of the study will be presented. First I locate the study in the larger frame of international relations studies.

This study discusses principles of the Responsibility to Protect (R2P) as a United Nations Security Council (UNSC) practice in South Sudan and how these practices construct R2P and prevent and respond to genocide, war crimes, crimes against humanity, and ethnic cleansing. These practices are considered constitutive of institutions of international society.

R2P is a political concept, not a legal one, but it has legal consequences (Orford 2011; Glanville 2012). As R2P concerns mass atrocity crimes, grave violations of human rights, it means that there are victims and perpetrators. This is a difficult situation for the UN. Does it need to take a stand? However, this idea is an integral part of R2P, which is also reflected in different institutions of international society, and the role of the International Criminal Court (ICC) must be considered. When legal aspects meet politics, tensions arise, as there are legal and political assessments to make (see Scheffer 2009). And while legal considerations are an integral part of R2P, so are ethical considerations since R2P also raises ethical questions.

The UN and UNSC have been criticised for not having succeeded in protecting civilians from mass atrocities, e.g. in Libya, Syria, Yemen, Myanmar. Demands to do better have been raised (see e.g. Einsiedel & Bosetti 2016; Harrison 2016; Hehir 2017; Cunliffe 2010; Adams 2019; Kurz & Rotmann 2016). However, to see only the failures to implement R2P is to ignore the UN's long-term achievements (Navari & Knudsen 2018; also Luck 2006).

In international relations, there have been many approaches to discussing international organisations, institutions and cooperation, and the terms "institution" and "cooperation" have been used in different ways (see e.g. Simmons & Martin 2002; Keohane 1988; Buzan 2004; 2014). International cooperation and governance were theorized in international regimes studies, and later international regimes were related more just to international

cooperation. Keohane (1984) started the rational functional approach (cooperation under anarchy), which was later criticised by constructivists, who stressed the intersubjective social context for international institutions (see Simmons & Martin 2002). Wendt and Duvall (1989) suggested that all international institutions are mutually constituted, unconsciously reproduced institutions of international society, so-called “old” institutionalist and consciously constructed institutions (regimes) into which “new” institutionalists put their efforts. They further argued that international institutions are firmly related to the practices of state and non-state actors.

The English School (ES) concept of international society has its roots in Groatian thinking (see e.g. Bull & Kingsbury & Roberts 1990). Institutions have been important in that thinking but in a different sense than e.g. rationalists have done. The ES definition of institutions is related especially to Hedley Bull (1995) and Martin Wight (1991) and how they see the relations between international organisations, secondary institutions and other primary institutions of international society. The ES and constructivists have contributed to the e.g. intersubjectivist understanding of institutions (see e.g. Dunne 1995; 1998; Reus-Smit 2009).

K.J. Holsti (2004) discussed change in international politics – how to identify change and what is meant by change – and chose international institutions as markers of change along the lines of Hedley Bull. Barry Buzan (2004; 2014) further defined international institutions and made note of the roles of international organisations, stating they are empirical manifestations of primary institutions, and they are consciously designed by states. Navari (2018, 61) remarks how Bull, Holsti and Buzan all considered international organisations only as manifestations of primary institutions. This in turn inspired Navari and Knudsen (2018, 6–8) in their work on international organisation, that they “are not only organizing but potentially also *transforming* the constitutive principles and practices of fundamental institutions and thus potentially international society and world order as such” (ibid., 8).

As the research question in my study concerns the role of the UN, the UNSC and the ICC, the English School theory of international society is very apt for this. International society is understood through its institutions, primary and secondary, their role in international society, how they are related, and how institutional continuity and change take place. The main concern is on the theory of institutional continuity and change. The reproductive and changing role of the UN and UNSC is the discussion I wish to contribute.

This research reflects and builds especially upon Tonny Brems Knudsen’s (2013; 2015; 2016; 2018; 2018a; see also Navari 2018) theorising on primary and secondary institutions. A starting point for the thinking is that primary institutions constitute international society and thus order and justice. He distinguished between constitutive principles inherent in primary institutions and the range of practices which reproduce them. Further, he developed the idea that there is a relationship between primary and secondary institutions, and these primary and secondary institutions are mutually constitutive. As

they are mutually constitutive, secondary institutions have a role in institutional change. Continuity refers to the reproduction of the constitutive principles, and change refers to changes in the practices that reproduce the constitutive principles.

In his work, Holsti (2004) defined procedural institutions, which he separated from primary institutions, as they have different functions in his thinking. In my research, I have defined R2P as a procedural institution (see also Palmujoki 2018) and combined this idea with Knudsen's theorising. Further, I will contribute to this institutional theory with some ethical considerations.

Ethical considerations and ethical reasoning are added to the theory of institutional change and continuity as well as to this study's methodological approach. As the UN and UNSC are considered moral agents, their workings should also be evaluated from an ethical perspective. This aspect is often forgotten in international relations theory, although it is very firmly there – or at least it should be there. In normative theorising, how things are is different than how they should be. International actors, like the UN and UNSC, might often show ethical incompetence instead of ethical competence (Ralph & Gifkins 2017); “doing ethics” should be required from all international actors (Frost 2009). This means, accordingly, that the UNSC's R2P practices are analysed in terms of ethical standards and considering whether they are ethically competent practices – which they should be to be proper R2P practices. Ethical competence needs ethical skills, which means the ability to weigh between different possibilities (Frost 2009).

## 1.1 Research question and argument

The research assignment is how to respond to mass atrocities, meaning the Responsibility to Protect (R2P) as a United Nations Security Council (UNSC) practice, with the South Sudan conflict<sup>1</sup> providing the research material. The time scope for the research is the South Sudan conflict discussions in the Security Council between 2011 and 2015 – the time just before South Sudan's independence until 2015 (August 17), when the *Agreement on the Resolution of the Conflict in the Republic of South Sudan* (ARCSS) was signed. South Sudan can be called “a clear R2P case” as it is manifestly failing to uphold its responsibility to protect (GCRP 2017). Indeed, the conflict continued after the signing, during which atrocities were still committed against civilians (GCRP 2017a). A *Revitalized Agreement of Resolution on the Conflict of South Sudan* (R-ARCSS) was signed by the same parties in Addis Ababa in September 2018 (IGAD 2018). There is some optimism regarding the

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<sup>1</sup> The expression “South Sudan conflict” is used most often in this study, as I define conflict to mean “the pursuit of incompatible goals by different groups” (Ramsbotham, Woodhouse & Miall 2016, 34). This kind of definition refers to any political conflict – political, armed or violent conflict – which includes one-sided violence or mass atrocities against unarmed civilians (ibid.). In South Sudan, these conflict types can be noticed, and the term “conflict” covers them all. Different definitions of different kinds of conflict (see UCDP 2017).

R-ARSCSS, Uganda and Sudan being guarantors for the agreement (GCRP 2018a; ICG 2019).

My research question is how UN and UNSC practices – both discursive and social practices – constitute R2P and how these practices may change or maintain primary institutions of international society and thus affect the nature of international society. The theoretical contribution of the study concerns the role of secondary institutions in the ES theory of international society and the empirical contribution of UNSC practices in preventing and responding to mass atrocities, thus constructing R2P.

I start with the latter aspect and contextualise R2P at the same time. The principle of the responsibility to protect (R2P) deals with preventing genocide, war crimes, crimes against humanity, and ethnic cleansing. These are atrocity crimes as defined in the Rome Statute of the ICC (1998)<sup>2</sup> and the Convention on the Prevention and Punishment of the Crime of Genocide (1948), the 1949 Geneva Conventions<sup>3</sup> and their 1977 Additional Protocols<sup>4</sup>. The terms “mass atrocities”, “mass atrocity crimes”, “atrocity crimes”, or “atrocities” are used interchangeably in this research, as they frame the scope of R2P<sup>5</sup>. Former UN Secretary-General Ban Ki-moon asked that R2P be mainstreamed in the UN System as a whole and create a common strategy instead of new programmes or approaches (UNSG 2009, para. 68; see also Bellamy 2013). Mainstreaming has succeeded at least to the extent that so-called “R2P-language” is now the proper way to speak or approach mass atrocity crimes (Brown 2013; Bellamy 2015), while R2P has also been institutionalised throughout the UN (Boisson de Chazournes 2010, 104). R2P “frames how to think about the prevention of mass atrocities and respond to the outbreak of these crimes” (Bellamy 2015, 11).

The Responsibility to Protect was accepted at the UN World Summit in 2005. Paragraphs 138–139 of the World Summit Outcome document (UNGA 2005) state that

*138. Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails*

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2 Genocide (Article 6); crimes against humanity (Article 7); war crimes (Article 8). Ethnic cleansing has, in the context of R2P, included atrocity crimes although not a crime in the same sense as genocide, crimes against humanity and war crimes, but it can involve acts that may lead to mass atrocity crimes. Regarding the concept of ethnic cleansing, see e.g. Mann 2009.

3 The Geneva Conventions: the 1949 Geneva Convention I for the Amelioration of the Conditions of the Wounded and Sick in Armed Forces in the Field; II for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea; the 1949 Geneva Convention III relative to the Treatment of Prisoners of War; and the 1949 Geneva Convention IV relative to the Protection of Civilian Persons in Time of War.

4 The Additional Protocols: the 1977 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I); the 1977 Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II).

5 The legal meaning of genocide is not discussed here, as it is included in the concepts of mass atrocity and mass atrocity crimes (see Simon 2012, note 7, p. 11; see also Scheffer 2009; Rotberg 2010). Regarding the concept of genocide, see e.g. Dunne & Krosiak 2000; Makino 2001; Totten 2004.

*the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability.*

*139. The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out.*

The Responsibility to Protect was accepted at the UN World Summit in a bit different form as was stated in the landmark report of the International Commission on Intervention and State Sovereignty (ICISS 2001). This has been described as an important event “in the quest for an international consensus on moral and ethical rejection of mass atrocities of human beings emanating from human conscience” (Nasu 2009, 231; also Bellamy 2009) and reflecting normative development in the UN (see e.g. Kurz & Rotmann 2016).

R2P has had three conceptualisations, the ICISS report, the UN World Summit and the latest of them by Ban Ki-moon (UNSG 2009), who established a three-pillar strategy for its implementation, namely, *Pillar One*, the protection responsibilities of the State; *Pillar Two*, international assistance and capacity-building and *Pillar III*, timely and decisive response of the international community<sup>6</sup>.

The empirical contribution of the research is related to the normative development of the UN. Normative developments at the UN arise in response to international events (Cater & Malone 2016), while the UN also introduces “new principles into international relations” intended to make a difference in people’s daily lives, thus also having a strong ethical content. The UN is changing relations between states and ways they are managed

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<sup>6</sup> These three pillars of R2P are discussed in detail in Chapter 3. Regarding the R2P research, see e.g. Evans 2008; Knight & Egerton 2012; Bellamy 2009; 2010; 2011; 2015; 2015b; Luck 2015; Sharma & Welsh 2015; Gallagher & Ralph 2015; Bellamy & Dunne 2016.



(UNSG 2000, para. 9). Setting norms and standards is one of the main ways the UN implements the aims and purposes set in its Charter (see Weiss 2015; Jolly, Emmerij & Weiss 2009; MacQueen 2011, 69–70; Kurz & Rotmann 2016).

Existing practices of protection should be integrated into a coherent framework for the prevention of mass atrocity (see Orford 2011) to reflect cosmopolitan consciousness (Ralph & Gifkins 2017). The SG's three-pillar strategy for R2P could mean that. The UNSC can issue, "resolutions, authorise peacekeeping operations, international sanctions or military action or use preventive diplomacy or mediation" (Mayersen et al. 2011, 17). Resolutions and presidential statements are negotiated statements of the UNSC's intent or action, and they express the UNSC's contribution to international relations (Hurd 2007, 3–4; Wood 1998; 2017; Talmon 2003; Milanovic 2009). They are political documents and normative statements rather than operational blueprints (Manson 2015, 31).<sup>7</sup>

The number of UNSC resolutions using R2P has not only increased as of late, but the negotiation of R2P language has been less problematic than earlier (Gifkins 2016; 2016a). However, this has not solved the difficult issue of R2P. For instance, the UN and UNSC have been criticised for not having been able to respond to e.g. Syrian crises or South Sudan conflict, and criticism of the UNSC grows all the time for its inability to prevent mass atrocities and respond to them properly. In other words, that the UN has not fulfilled its promise of protection (see e.g. von Einsiedel & Bosetti 2016; Harrison 2016; Hehir 2017; Cunliffe 2010; also UNSG 2004, para 100; UNSG 2006, para 2, 4; also Navari & Knudsen 2018, 2–3).

How is it possible that the UN and the UNSC could not able to do better in situations in which grave human rights violations are committed in armed conflicts, although there are good reasons to think that international protection practices have been more commonly put into use (Bellamy 2016, 118; Hultman 2013)?<sup>8</sup> How can this paradox be perceived in

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7 In drafting resolutions, since 2010, the UNSC has used a penholding system. Penholdership is an institutionalized, but informal system meaning that in practice, three permanent members, P<sub>3</sub>, France, the UK and the US, are penholders for most of the situation-specific agenda items. The P<sub>3</sub> agree regarding a given resolution, then negotiate with the P<sub>2</sub>, Russia and China. The P<sub>5</sub> agreed text is then given to the non-permanent members, E<sub>10</sub>. This is an efficient system which was developed to help with the UNSC's workload and address its internal division of labour, but has produced as its side-effect a gap between P<sub>5</sub> and non-permanent members, elected members (E<sub>10</sub>) (SCR 2014, 12–14; SCR 2017, 5; SCR 2018, 2–3). E<sub>10</sub>, elected members as the other UN members have questioned this system (SCR 2018a, 2). SCR (2017, 5; also 2018a) mentions the penholder system as a limitation in Council actions, as penholders can themselves be overburdened and not see negative trends in issues for which they are holding the pen. The US is a penholder for Sudan-South Sudan and South Sudan issues. South Sudan President Salva Kiir had had good relations with former US President George W. Bush. President Obama had in his administration officials of long-standing relations with South Sudan, most notably Ms. Rice, Permanent Representative to the UN of that time. The US supported the Comprehensive Peace Agreement (CPA) between Sudan and Southern Sudan in 2005 as well as South Sudan's independence, as did the UK (Johnson 2016, 13).

8 See van der Vet (2013) *The United Nations Child Policy. International Games of Morality and Power*. She discusses how the UN has brought children's rights to the agenda of international peace and security, which provokes norms contestations. This also relates the idea of civilian protection, the tensions between human rights and sovereignty.



the South Sudan case? Holtman, Kathman and Shannon (2013) have argued that the UN peacekeeping forces, the UN's primary practice for protecting civilians, can succeed in protecting civilians and preventing civilian killings if they are properly resourced. The United Nations Mission in South Sudan (UNMISS) has been under-resourced, but would a properly resourced operation have solved all the related problems? According to Secretary-General Special Representative (SGSR) Johnson (2016, 122, 99) no amount of troops would have been enough in South Sudan, yet she also wondered how the force level was calculated.

These human protection practices (e.g. humanitarian interventions) may cause more harm than good. They can be counterproductive (see e.g. MacQueen 2011, 207–227) and cause unintended consequences (Hunt 2017; Paris 2014). The question is not whether to act in situations of grave human rights violations, but *how to act*. The practices used have not always succeeded, either in the sense that they have not produced a stable state but instead in many places, “second-tour peace-building operations” (Woodward 2007, 144–145). The “systemic failure” in Sri Lanka in 2008 when the UN was not prepared for situations in which a government-violated human rights and humanitarian law gave impetus to *The Human Rights Up Front Initiative* (HRUF)<sup>9</sup> (Kurtz 2015), while the Libya case of 2011 triggered a discussion concerning the whole meaning of the R2P principle (see e.g. Bellamy & Williams 2011; Williams 2011; Brochmeier, Stuenkel & Tourinho 2016). In South Sudan,<sup>10</sup> things have not improved, quite to the contrary (see e.g. FFP 2018), although it has ingredients for successful statehood (see Mackenzie & Smith 2015, 69). Despite the problems, to go “beyond sovereignty” could mean the development of a global morality (see MacQueen 2011, 68–69).

Hehir (2017, 340) notes how R2P necessarily concerns also preventing other kinds of human rights violations as they can lead to more serious violations and mass atrocities. The responsibility to protect thus also concerns the prospective responsibility to protect human rights, not only the retrospective responsibility to respond to mass atrocities (see & cf. Karp 2015). Thus, the logic of R2P Pillars makes sense. The prevention of mass atrocities is a broad concept and an ongoing process in societies, where the rule of law should be respected and all human rights protected. There should be legitimate and accountable national institutions which function without corruption and manage diversity and support civil society with free media. If a state cannot provide this, it may create circumstances

9 HRUF will be discussed in Chapter 3.

10 In their research on South Sudan, Malan and Hunt (2014) argued how the UNMISS mandates of state-building and the protection of civilians were problematic from the start. Giffen (2016) offered an analysis of risk factors before December 2013 in South Sudan. If the risk factors had been identified and integrated to the UNMISS mandate, prevention or at least mitigation of the conflict could have been possible. The situation in South Sudan was estimated to be very serious in 2012, with “a significant risk of occurrence of mass atrocity crimes within the foreseeable future if effective action is not taken” (GCRP 2012). Atrocity crimes are not random events. On the contrary, they are processes which can start with hate speech, discrimination and marginalization (UN 2014, 4–5). South Sudan has met and meets several risk factors, which increase the risk of grave human rights violations (see also Harff 2009).

conducive to mass atrocities (UN 2014, 3). Pillars I, II and III are all thus meaningful from the viewpoint of mass atrocity prevention (Welsh & Sharma 2012, 11).

As the theoretical question of the study is how these UNSC practices change and maintain primary institutions of international society and affect the nature of international society, it is worth asking how these secondary institutions – the UN, the UNSC and the ICC – shape primary institutions, how these primary institutions shape secondary ones, and how they constitute each other. Primary institutions under scrutiny in this study are sovereignty, human rights and great-power management, as they can be thought to shape the very practices of the UNSC related to mass atrocities. They are at the same time the constitutive principles of the procedural institution of R2P. Discursive practices of R2P – mentioned pillars I, II and III (see Chapter 3) and social practices of the UNSC (see Chapter 4) are considered mutually constitutive. R2P depends on the functioning of the primary institutions and various (discursive) practices that constitute those institutions. Discussion between these two types of institutions and how they are interrelated are meant to show how (social) practices of the UNSC reproduce and change international society, especially in terms of pluralism, solidarism and ethical considerations.

My *argument* is that the UN, according to Article 1(1) of the UN Charter<sup>11</sup> and the UNSC, according to Article 24 (1)<sup>12</sup> – as secondary institutions of international society – contribute to the fundamental aim of maintaining international peace and security by *constituting R2P*. The UNSC practices to prevent and respond to mass atrocities in South Sudan embody the re-conceptualisation between the principles of human rights and sovereignty, addressing the implied moral imbalance between them, thus contributing to human security by protecting civilians. This, however, implies an interplay between pluralism and solidarism by reflecting different possibilities for moral action, thus explaining different “outcomes”.

This means a change in the meaning of the practices of the UNSC itself (cf. sovereignty as non-intervention, collective security), a normative change, as well as implications for the institutions of international society and for the nature of international society itself (Knudsen 2013; 2015; 2016; 2018; 2018a; Navari & Knudsen 2018). UNSC practices may provide a framework to address mass atrocities, but these practices can reflect and operationalise many primary institutions simultaneously (see Palmujoki 2017).

Practices of protection have developed gradually since the 1990s (Bellamy 2016, 117; cf. Orford 2011). However, existing tensions between the concept of sovereignty and

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11 “To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace”.

12 “In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.”

that of human rights have been a clear obstacle to human protection (see Badescu 2012). However, human protection is evident in almost all UNSC resolutions and statements. R2P is becoming a standard behaviour of both state and non-state actors (Luck 2010, 109; cf. Reinold 2010), and no delegation at the UN questions the preventing mass atrocity crimes (Luck 2015, 3; 2011). The UNSC has a discursive function, providing a place “for contestation and deliberation when the international community is divided on how to address threats to peace” and is at the center of the discursive process for managing tensions (Johnstone 2017, 229). This moral imbalance, however, is changing as human protection practices have developed. The UNSC discursive practices produce and reproduce R2P basic principles – sovereignty, human rights and great-power management.

It is important to consider UNSC practices in relation to the normative framework R2P has established, reifying a practice that fit the purpose of preventing mass atrocities and thus the UN purpose (see Ralph & Gifkins 2017). In this way, a coherent framework for mass atrocity prevention can be constructed (Orford 2011). Usually, the question concerns how to proceed from *words to deeds*, from ideas to actions or from principle to practice (e.g. Bellamy 2011; Thakur & Weiss 2009; Hoffman & Noellkaemper 2012; Bellamy & Luck 2019), and how to implement existing R2P (see e.g. UNSG 2009; 2015), meaning there is a set of principles, R2P, which the international community should aim to put into practice (see also Sending 2013; Richmond 2007).

In this study, I will proceed from the concept of *deeds to words* by echoing Orford (2011) especially, not in the sense that I would take R2P as a justification for existing practices (see Sending 2013), but rather how these practices constitute R2P and what kind of international society they are producing, reproducing or changing. Doings constitute sayings, but not necessarily vice versa (Schatzki 1996, 134), which also means that social and discursive practices (see sub-chapter 1.2) are not synonymous (ibid.). Discourse and discursive practices do not determinate action. There is a possibility to do otherwise (Neumann 2008, 62), but I am inclined to say that they, social and discursive practices, are mutually constitutive.

Practices should be R2P-competent performances. R2P is “more” than implementing practices of protection – the legitimacy of the actor, state, the UN and the UNSC comes from their capacity to offer protection. The state has to earn its sovereignty by protecting its people, and if the state is not able or willing to do that, the responsibility to do this falls upon the international community (Orford 2011)<sup>13</sup>. Human rights considerations are no longer only territorial or internal considerations (see e.g. Gibney 2011).

This kind of approach has been applied earlier, when Ralph and Gifkins (2017) discussed the purpose of the UNSC practices and consequently offered a different interpretation of the Libya intervention by saying that the three permanent members of the UNSC, the P<sub>3</sub>, (the US, France and Great Britain) did not develop collective consciousness which would

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<sup>13</sup> “International community” is an empirical concept, and “international society” is a theoretical concept (see e.g. Annan 2002; Menon 2009).

have been necessary for implementing R2P (cf. Welsh 2013), in other words, the practices employed in the Libya intervention were not R2P-competent (see also Komp 2013). The Libya case was not a “proper” R2P-case.

To consider practices, including R2P practices, without a normative framework could lead to misinterpretations regarding R2P performances. Alex Bellamy (2015b, 167, 178) argues how the UN, in particular, has a responsibility to protect populations from genocide and mass atrocities. International protection practices have become almost routinised, unlike before. Bellamy has made a table of R2P and its responses to new crises between the years 2011 and 2015. He lists Syria, Libya, Iraq, Central African Republic, South Sudan, Sudan, Mali, Democratic Republic of Congo, Somalia, and Côte d’Ivoire. Since these conflicts have all been different, the UNSC made use of the wide range of practices at its disposal. For South Sudan, Bellamy lists peacekeeping, diplomacy, humanitarian assistance, inquiry, accountability, and state-building. However, were all these practices in all these conflicts suitable for their purpose, or were they just practices interpreted without the normative framework of R2P? Further, could this be a determining factor in the success or failure, as cases have shown, of these operations?<sup>14</sup>

It has been argued (Hutton 2014, 4) that the main issues in South Sudan conflict “are fundamental questions about democratic values, about accountability and justice and overcoming narratives of marginalisation, impunity and ethnic bias”. There are many narratives about the South Sudan conflict that indicate how its causes are framed (see e.g. Gerenge 2015; Hemmer & Grinstead 2015; de Waal 2014; ICG 2014). The main narrative is, however, that the conflict concerns the struggle for political leadership between two ethnic groups (de Vries & Schmerus 2017). This two-party-narrative has been criticised for being misleading and limiting possibilities for peace (see de Vries & Schomerus 2017; also Hemmer & Grinstead 2015).

It has been estimated that approximately 50 000 people were killed during the conflict in 2013–2015, with *both* parties committing atrocities and targeting civilians based on their alleged political loyalties and ethnicity. Approximately four-million people have left their homes since 2013, with little hope of going back (GCRP 2018)<sup>15</sup>. In December 2013, the Human Rights Division (HRD) of UNMISS (UNMISS 2014) reported on

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14 In Hunt’s (2016) discussion of the case of Côte d’Ivoire and the international community’s response to the post-electoral violence and civil war in 2010, the response was framed as “international protection”, while the UNSC used different practices including the use force to protect people. It can be considered to have been successful to some extent, but also the use of force was questioned and criticized. However, it brought up important issues of R2P to be discussed. Kenya’s post-election crises (Sharma 2015; 2016) has been called a success story for R2Prevent but on the other hand it has been argued how the solution was imposed from the outside. Sharma (2016, 762) explains how in Kenya there were tensions between R2P and the responsibility to prosecute, referring to Uhuru Kenyatta and William Ruto for their alleged role in the 2007–2008 violence as they were both facing trial at the ICC. There was an attempt to tackle impunity in Kenya but it contradicted peace. It could be said that law met politics (see Scheffer 2009).

15 A new estimate has been given of the number of people killed. Estimates vary from between 50 000 to 400 000 people killed (GCRP 2018a).

the worsening situation in South Sudan following the outbreak of armed clashes in Juba, the capital of South Sudan, and subsequent fighting between the government of South Sudan and opposition forces. This report forms a part of the HRD's efforts to contribute to early-warning and protecting civilians in South Sudan. During its mainly interview-based work with witnesses, victims, government, and security officials, the HRD reported "the deliberate targeting of civilians, both nationals and foreigners, in extrajudicial and other unlawful killings, including mass killings, enforced disappearances, gender-based violence, such as rapes and gang-rapes and instances of ill-treatment and torture by forces from *both* sides of the conflict" (UNMISS 2014, 3). There were also "reasonable grounds to believe that crimes against humanity [...] have occurred" (UNMISS 2014a, 3)<sup>16</sup>. The South Sudan conflict is discussed in greater detail in Chapter 4.

## 1.2 Discursive formation of international society

I apply the English School theory in my research, and below I first discuss how institutions are understood as practices and then present the concepts of primary and secondary institutions of international society. A more detailed analysis of the English School is presented in Chapter 2.

### 1.2.1 Institutions as practices

There have been different *turns* in international relations such as a *linguistic turn* (see e.g. Debrix 2003), and a *practice turn* (Adler & Pouliot 2011; 2011a; Schatzki et al. 2000; see also Frost & Lechner 2016). Neumann (2002, 627–628) refers to the linguistic turn, text-based approaches and discourse analysis<sup>17</sup> as a sub-set of the linguistic turn. He further

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<sup>16</sup> Harff argues that there has not been any proper early-warning system in preventing mass atrocities but instead "late reports of ongoing atrocities" (Harff 2009, 506). She argues further that what is usually called early-warning is local information interpreted by experts on the spot.

<sup>17</sup> *Discourse analysis* as a methodology is related to social constructivist epistemology: social reality is actively created through action. Social reality is constructed by discourse which constitutes new ideas, and practices (Hardy, Harley & Phillips 2004, 20; Crawford 2004; Laffey & Weldes 2004; Fierke 2007). The post-ICISS Report discourse of R2P constituted the idea of sovereignty as responsibility – that it is not politically and morally acceptable to harm its own citizens – as a new meaning of sovereignty at the UN. Also, practices which constitute discourse thus approach the idea of discourse as practice. According to Adler and Pouliot (2011, 16), it is important to understand discourse as practice and practice as discourse as is done in this study. *Constructivists* put focus on ideas, norms and arguments; intersubjective ideas play the main role in understanding social life. Constructivists concentrate on "social facts". Social facts have no material existence, e.g. sovereignty and rights, but they exist because people believe they exist. As Finnemore and Sikkink (2001, 393) state, "Understanding how social facts change and ways these influence politics is the major concern of constructivist analysis". Agents and structures are mutually constituted in different ways and thus offer a possibility to understand the political world (regarding constructivism and the English School, see e.g. Reus-Smit 2009; Dunne 1995; 1998).

discusses how these have meant a turn for practices: practices are discursive because they involve speech acts and cannot be thought of outside discourse. Discursive practice was Foucault's (1972) important concept: they are practices of discourse, and thus called discursive practices. For Foucault, discourse as practice, or a set of practices, refers to knowledge formation ("human sciences") in the interaction between different practices, like R2P. As discourse is understood as a practice, this especially relates Foucault to practice turn (see Bacchi & Bonham 2014, 181). Discursive practice, as a concept, does not refer to people practising discourse but how discourse operates through its own rules, which are in discursive practices (Foucault 1972, 40–49; Bacchi & Bonham 2014, 182). However, practice theorists have thought otherwise and stressed material practices as their starting point (Neumann 2002, 630).

According to Sending and Neumann (2011, 235), practices perform discourse (cf. practices and discourse are mutually constitutive), they act to organise and redirect and specify the functioning of discourse that e.g. the UN and the UNSC enact and take part in producing. Thus, discourse is "not only rhetoric" as it enables action. Discourse analysis includes the analysis of (social) practices, meaning the study of social action itself (Neumann 2002, 627–628; Neumann 2008; Adler & Pouliot 2011).

Some have argued that the English School of international relations has always taken practices seriously as was asked in the practice turn discourse. Institutional practices have been important in the constitution of international society for English School scholars (Little 2011, 174), and these institutions of international society come close to the idea of "socially organized and meaningful activities" (Adler & Pouliot 2011, 4).

The English School has discussed institutions and not the idea of practice as such, but as Little notes, there is a shared understanding that institutions and practices could be considered synonymous (Little 2011, 176; cf. Kopra 2016). As Bull establishes in his "Anarchical Society" (1995), primary institutions of international society – a balance of power, diplomacy, international law and great-power management – can be seen to mean a complex set of practices, how international society is constituted "by a mix of divergent and sometimes competing practices that contribute to a complex and multidimensional reality" (see Little 2011, 180; 177–180). International society is not pre-determined by pre-determined goals, but global social rules may define how these goals are pursued. Action and shared meaning in international society can be interpreted, understood and misunderstood (Frost & Lechner 2016, 349).

Navari (2010) states how social practice theory has given the English School (ES) a firm, noticeable theoretical grounding and how the ES itself has provided practice theory with empirical evidence, since social practice theory has otherwise remained on quite a high theoretical grounding. For this reason, the ES has been mentioned as an explicit example of a practice turn. Navari discusses the ES concept of a social practice and defines it as "a purposive goal-oriented conception". It is a telic notion (Navari 2010, 613) as well as a normative one.



According to Navari (2010), the aims and structure of Schatzki's practice concept come closest to the ES understanding. Schatzki (2000) discusses – as does Navari (2010) – the various practice theorists<sup>18</sup> and the concept of practice that has divided different practice theorists<sup>19</sup>.

Navari sees practices as “a competent performance” as do Adler and Pouliot (2011; 2011a) but considers Schatzki's concept most suitable. Practice theorists argue that “practices are the source and carrier of meaning, language and normativity” (Schatzki 2000, 21). Schatzki (1996, 89) has defined practices as having three components which allow the identification of a practice. These are through practical understandings, rules and principles and “teleoaffective” structures. Teleoaffectivity refers to the way in which practice is goal-oriented and how this goal is important and matters to the community (see Little 2011, 177).

Maurice Keens-Soper was the first ES theorist to use the concept of practice. He defines the concept of practice according to the same three characteristics Schatzki used to identify the ES. *Firstly*, the ES is a text-based approach; *secondly*, the ES is closely related to discourse theory, as the interest is in the *intents* in texts. In the ES analyses, language expresses meanings, and the aim is to recover the intent. *Thirdly*, the ES concept of practice could be identified as an institution as defined by Hedley Bull. Bull's institution could be said to be synonymous with Schatzki's practice concept (Navari 2010, 618–620; Neumann 2002; see also Frost & Lechner 2016, 346–349).

If we apply this concept of practice to R2P, there seems to be a clear understanding of how to “prompt and respond” to mass atrocity crimes. There is a rule or standard – those “principles, instructions and formulations” (Pillars I, II and III) which should be considered when responding to mass atrocity crimes, and there is a goal to prevent and end mass atrocities.

Swindler (2000) uses the term “anchoring practices”, by which she means practices which enact constitutive rules. She sees them (Pillars I, II and III of R2P) as concrete manifestations of rules (sovereignty, human rights, great-power management) which in turn define basic entities and structure discourse. Sending and Neumann (2011, 237) agree with Swindler about the idea of anchoring practices meaning that some practices structure others, but they disagree that anchoring stems from the enactment of constitutive rules. Instead, they argue that “all practices enact and embody constitutive rules and principles in that they are *social* practices” (ibid.). Which practices are anchoring and which are structuring for others depend on what a researcher wants to study. Sending and Neumann

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18 On the variety and scope of contemporary practice theorists, see Schatzki et al. 2000; Adler & Pouliot 2011; 2011a; Schatzki 2016.

19 Frost and Lechner (2016) argue that there are two distinct conceptions of international practice – Aristotelian and Wittgensteinian. Thus, there are two ways to understand international practices. They relate Adler and Pouliot to Bourdieu's practice theory, which in turn is related to the Aristotelian practice concept. Frost and Lechner argue how the Wittgensteinian concept of practices as language-games is also of use to IR scholars (see also Schatzki 1996).

(2011, 237) see anchoring as a way to make other practices possible and how they are “being determined by which practices enact and embody defining rules and principles for a broader universe or set of practices”. Further, these practices provide necessary tools and resources actors need when using other practices.

This echoes Knudsen’s (2013, 16) idea of the definition of primary institutions “as a set of constitutive principle(s) and [...] associated set of practices by which the constitutive principles are reproduced” that have “the combining effect of structuring actions and interaction of states in a sociological rather than a deterministic sense” (see also Knudsen 2016; 2018; Navari 2018, 61–63).

Mass atrocity prevention, responsibility to protect, is not a settled practice but rather “a range of contested practices” (see & cf. Navari 2010, 620; also Welsh 2013) as “practices are not static but change over time as a result, among other things, of the debates that take place within them” (Frost 2003, 89; cit. Navari 2010, 625). Thus, there is nothing behind R2P or the practice of its recognition (see Navari 2010, 626) as in the ES sense actors have intentions and through practices, they express their intentions (Navari 2010, 627). In my research, this refers how the UNSC practices express its intention to prevent mass atrocities.

Social order is related to practices, interconnected to all human practices meaning “that order is understood (a) feature(s) of this field and [...] the components and aspects of the field are deemed responsible for the establishment of that order” (Schatzki 2000, 14). According to the ES, social order was defined via a pluralist international society’s international law, great-power management, the balance of power, diplomacy and war as its primary institutions. Survival and coexistence were its main goals (Hurrell 2014, 143–144). Thus, order is a superiority claim over justice, as for Hedley Bull the analytical task was to uncover the basic conditions under which social order could be obtained. Questions of order and justice were kept separate, while order was important as a condition for other values: “International order [...] is the condition of justice or equality” (Bull 1995, 93; Hurrell 2014).

There has also been a *normative turn* in international relations (see e.g. Frost 1996; Linklater 1990). John Vincent accomplished this normative turn in the ES framework in 1986 with his landmark book, “Human Rights and International Relations”, where he discussed the emerging norm of international human rights (Navari 2009). Reus-Smit (2009, 59) argues normative inquiry between order and justice is the most important feature of ES scholarship. The potential for moral action has been the main concern of ES scholars and has also been a concern when discussing the relationship between constructivism and the ES<sup>20</sup>. Reus-Smit (2009, 68–69) concludes that constructivists could learn most from the normative aspect of ES scholarship (see also Price 2008; Reus-Smit 2008). The ES has taken seriously what constitutes ethical conduct in international and political life (Reus-Smith 2009, 69).

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20 As Reus-Smit (2009, 60) states, both constructivism and the English School are very complicated.



Cochran (2008, 294) refers to two potential strengths of the ES ethical approach, namely how ethics and interest are not necessarily in contradiction with one another and how this attitude respects moral conflict and the difficulties of building a global-level moral community. Cochran (2008, 296) further argues how both so-called pluralists and solidarists (see especially Chapter 2) must respect the “limited horizons” for their ethical desires when looking for justice in the framework of “an interest-based society of states”. Reus-Smit (2008, 80) discusses how the debate between pluralists and solidarists concerns different views of the limits of moral action. Pluralists see that the scope of moral action is restricted, which solidarists see possibilities for moral progress.

The post-Cold War world seemed to suggest a move towards a more solidarist international society. Human rights show this clearly (Dunne 2007a, 141). This solidarist move means a move beyond the pluralist principles of coexistence of the international order and addresses the fundamental arrangement of international society. This could mean i.e. a softening of the norms of non-intervention. A move towards a solidarist international society involves i.e. a change in the foundational principle of sovereignty. Knudsen (2013, 28) has argued that there would be no reason to discuss international society if there were no rules and norms to provide some response to genocide. As he states (2013, 19), “To study the solidarist change in a previously relatively pluralist international society is to study and understand central tensions and dilemmas of contemporary international society” (see also Knudsen 2015; 2016; 2018; 2018a; Navari & Knudsen 2018). This idea is reflected in my research.

## 1.2.2 Institutions of international society: primary institutions

Preventing mass atrocities is only possible when rules and norms are interpreted within the framework of justice and human rights. Motive or intentions for operations and activities should be protection of people, protection of victims and human security; preventive discourse should be solidarist to trigger necessary practices. There should be a *normative consensus* so states see mass atrocities as a threat to their national interests and international peace and security (see Woodward 2007) or that “states may define their ‘national interest’ as encompassing a concern for the victims of crimes against humanity” (Brown 2013, 442; see also Ralph & Gifkins 2017). As Cochran stated (2008, 294), when it comes to ethics and interest, one does not necessarily contradict the other.

R2P depends on the functioning of the primary institutions of international society and various discursive practices that constitute these institutions. R2P and solidarity are intertwined (Boisson de Chazourness 2010). Conversely, pluralist practices and principles give us a different interpretation of international society, where the concern of the victims was not interpreted as a national interest (see above). Thus, there ought to be an international solidarist society, whereby sovereignty is considered a responsibility, and human rights and justice are taken as main values to advance R2P through atrocity crimes

preventive practices. Victims ought to be a main concern, as a national interest, which is the idea in the solidarist conception of international society (see Brown 2013, 442).

There are different interpretations of international society. When theorising about this concept, the debate about pluralism and solidarism arises and questions about order and justice ensue (see Bull 1966; Wheeler 1992; Dunne & Wheeler 1996; Wheeler 2000; Bain 2014; Hurrell 2014). The question regards what kind of rules and norms and institutions/practices on which international society should be based. Under discussion are not only the relationship between order (pluralism) and justice (solidarism), human rights and non/intervention but also state (pluralism) and individual (solidarism). Bull (1966, 52) defined the pluralist conception of international society as “states capable of agreeing only to certain minimum purposes [like] reciprocal recognition of sovereignty and the norm of non-intervention”. Wheeler and Dunne (1996, 94–95) point out that states cannot share any substantive goals and values but “recognize that they are morally and legally bound by a common code of co-existence”. This could be described so states form a practical association, “the framework of which is a web of functional, procedural institutions” (Reus-Smit 2009, 70). The solidarist conception of international society, according to Bull (1966, 52), implies a “solidarity or potential solidarity, of states comprising international society, with respect to the enforcement of the law”. As Wheeler and Dunne (1996, 95) argue, for Bull, the solidarism concept is purposive because it seeks to reserve the use of force to “the collective will of states”, and as pluralists point out the rights and duties of states, solidarism points out the rights and duties of individuals as their main ethical concern.

The discussion of pluralism and solidarism has within it the question of institutions of international society (Buzan 2004, 161), meaning what kind of institutions international society has and how institutions are interpreted. Buzan (*ibid.*) goes further and explains why the concept of institution is so important to the ES. First, it implies the “substantive content of international society”; second, it gives a definition of what is meant by “order” in international relations; and third, this understanding of institutions separates “it from the mainstream, rationalist, neoliberal institutionalist study of international regimes”. The notion of primary institutions (Buzan), or fundamental or basic institutions (Wight 1977; Bull 1995), is that states work together in international institutions of international society, namely mutual recognition of sovereignty, balance of power, diplomacy, international law, great-power management, and war (see e.g. Bull 1995, 71). Different scholars have different “lists” of what counts as a primary institution, and thus their numbers differ (see e.g. Buzan 2004, 161–204; Holsti 2004). Procedural institutions are discussed especially in subchapter 2.3.

These institutions, which Bull defines as “a set of habits and practices shaped towards the realization of common goals” (Bull 1995, 71), also symbolise international society, by definition a normative goal. They are functional institutions. Buzan (2014, 16–17) has set the following criteria for identifying institutions. They are “relatively durable social practices” which are “evolved” rather than “designed”; they concern the shared identity of members

of international society. Further, they “constitute both states and international society”, as they define what kind of behaviour is legitimate meaning the criteria for membership in international society (see also Buzan 2004, 167–189; Holsti 2004; Schouenborg 2014).

### 1.2.3 Institutions of international society: secondary institutions

This study discusses R2P discourse and practices at the UNSC. As such, *what is the role of the UN in ES thinking*<sup>21</sup>? The UN and the UNSC have a twofold role in this study. First, how they as secondary institutions constitute R2P and secondly, how these UNSC R2P reproductive practices might change or sustain the primary institutions of international society and thus affect the nature of international society (see also Navari & Knudsen 2018). Further, discursive practices of R2P (pillars of I, II and III of R2P) and social and purposive practices of R2P (e.g. UNMISS practices) should be seen as distinct however mutually constitutive.

According to Bull (1995, xviii), the UN and other international organisations are better understood “not in terms of the official objective and aspirations of these organizations themselves [...] but in terms of the contribution they make to the working of more basic institutions.” This means e.g. how the UN and UNSC can contribute to the functioning of different primary institutions like sovereignty, human rights, international law, and great-power management (see Knudsen 2013).

Buzan (2004) speaks of the UN and other international organisations as secondary institutions of international society (see also Keohane 1988). Buzan (2004, 182) states that international organisations like the UN are “nested” in fundamental institutions. Nesting solves the hierarchy problem between different institutions, as some generate others and some constitute international organisations. In other words, this is how war, sovereignty, international law, and great-power management make the UN’s and UNSC’s work possible<sup>22</sup>. Primary institutions precede secondary institutions, and there are no direct connections between these institutions in Buzan’s thinking (Navari 2018, 59–60).

Based on Bull’s thinking, Knudsen (2013,7) argues that international organisations contribute to primary institutions, and they are based on international organisations just as the UN has reproduced primary institutions (Wendt & Duval 1989). As an example, Knudsen (2013, 15) considers the great powers and the role they have in the UNSC; they have a meaning in reproducing e.g. great-power management, the balance of power or sovereignty. The UNSC also has an important role in the interpretation and development of international law. Primary institutions constitute interaction as secondary institutions have a more constraining effect, but they each have both features.

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21 See Navari (2018) regarding the research on international organizations.

22 About constitution, see e.g. Fierke 2005.

Secondary institutions are essential to the function of primary institutions in the sense of how their practices which constitute the principles of primary institutions are maintained, and primary institutional change allowed. Secondary institutions are frameworks for the reproduction and change of primary institutions and thus important for maintaining order and justice (Knudsen 2013, 34; see also 2018; 2018a). R2P is a good example of this discursive process (see e.g. Smit 2013; Bellamy 2015).

According to Bull, in the Grotian system, states bear the responsibility for security, the well-being of their citizens and human rights protection *everywhere* [italics TS] (Bull 1966, 63). According to this interpretation, individuals, not states, are members of international society. Grotius has a concept of society formed by states, but it comes after the universal community of mankind (Bull 1966, 68; also Bull 1995, 21).

Dunne presents (2007, 269) how the idea that individuals have rights because they are being humans is a new way of establishing “political and ethical calls”. So-called “human rights talk” has become the dominant way of seeing things, as “a new standard of civilization” (Donnelly 1998), or a new standard of legitimacy for international society (Clark 2005). A human right is claimed against the state; also, in this sense, sovereignty and human rights belong and are constitutive rather than against each other (see Donnelly 2007; Conlon 2004). Human rights constitute a practice in the sense that they set rules to regulate the behaviour of different agents such as states and the UN. These rules should be followed; they encourage compliance and discourage noncompliance. But also, normative practices “can be more or less well established” (Beitz 2013, 42). Beitz argues further (2013, 44) that human rights are not only standards to which the international community may hold each country’s institutions accountable; non-governmental actors can have them as goals for political change, fighting for justice found in “well-ordered domestic societies”.

In his research on humanitarian intervention, Knudsen (1999, 89) argues that humanitarian intervention reflects the tension between the solidarist and pluralist conceptions of international society and whether it is there or not, it implies the state of international society. He (1999, 89–90) is, however, re-conceptualising Bull’s distinction between solidarism and pluralism by implying there could be different versions of an international society. The acceptance of humanitarian intervention need not mean that international society would become solidarist in everything. Humanitarian intervention embodied in the practices of international society could have many meanings. It is possible to have a varying combination of solidarist and pluralist principles and institutions in international society. International society can embody different degrees of solidarism and pluralism where solidarist and pluralist (ibid., 90). Nevertheless, Knudsen (1999, 13) calls humanitarian intervention “the most profound expression of solidarism”. R2P could be considered a political expression of solidarity, one form of international solidarity (Boisson de Chazournes 2010, 103–104, 109).

Pluralist and solidarist conceptions of international society do co-exist. This means that the question of order versus justice (Bull 1995, 74–94; Knudsen 2015, 5; 2018a) is built

in international society. This also means that international society is constitutive of both pluralist and solidarist interaction (Knudsen 2013; 2016; 2018). The world is “made and remade” in human and social interaction, and “actors always have a choice” as to which position is at the centre of a particular social constructivist position (Fierke 2005, 7, 13).

### 1.3 Reading of the UNSC practices

In this sub-chapter, I present the methodological guidelines for my research, which will be referred to again in sub-chapter 4.4.

There are different approaches and understandings of methods and methodology in international relations in general and within the ES (see Navari 2009). The range of methods employed by ES theorists are many, implying methodological pluralism (Little 2000; 2009); still some argue that researchers should think more about “what they are doing” (Navari 2009, 13). This depends on what is meant by a method and how precise it is thought to be. It can be likened to a recipe to bake a cake, to developing a historical comparative method (Martin Wight) or to a kind of “structural-functionalism together with a causal method” (Bull)<sup>23</sup>. Other theorists, as discussed earlier, have been developing the concept of practice (Navari 2009, 1–2).

In this research, I analyse how UN and UNSC practices constitute R2P and how these practices can change or uphold primary institutions of international society and affect the nature of international society. The aim is to analyse the UNSC documents, the discursive practices of R2P meaning the three pillars of R2P and how they construct R2P (Chapter 3). This is related to empirical analysis of the UNSC documents on South Sudan (Chapter 4), how the practices of the UNSC meaning social practices, reproduce or change the constitutive principles of R2P - human rights, sovereignty, great power management -which, at the same time, are institutions of international society and thus may change international society. Are these UNSC practices R2P competent practices? This necessitates that the R2P should be interpreted in its normative and purposive framework also taking ethical considerations into account. Discursive and social practices are considered mutually constitutive.

The notion of practice refers to practitioners (Navari 2009, 12), what practitioners do (cf. discursive practice) and those competent performances as a starting point of study, thus taking practices seriously (Adler & Pouliot 2011, 3). Identifying *institutional moral*

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23 Bull's (1966a, 361) *classical approach* is “the approach to theorizing that derives from philosophy, history, and law, and that is characterized above all by explicit reliance upon the exercise of judgement and by assumptions that if we confine ourselves to strict standards of verification and proof there is very little of significance that can be said about international relations, that general propositions about this subject must therefore derive from a scientifically imperfect process of perception or intuition, and that these general propositions cannot be accorded anything more than tentative and inconclusive status appropriate to their doubtful origin”. Bull is thus originating interpretive methodology for the English School regarding how to study international relations (see also Dunne 2007a, 130–132).

*agents* or actors in international relations is an important practical exercise, as international relations is not an amoral realm, and ethical guidelines are needed to govern action (Erskine 2003a, 25). The UN and the UNSC can be said to contribute to the society of states and might be said to have agency. Thus, they might have moral agency as it “entails capacities for deliberating over possible courses of action and their consequences and acting on the basis of this deliberation” (Erskine 2003, 6). All actors are not moral actors, and as moral agencies have deliberative capacities, reasoning is possible for them and understanding their actions and outcomes (ibid.). It has been argued that R2P has expanded the UNSC’s moral frame, “organisational responsibility” and “circle of empathy” (Marlier & Crawford 2013, 421–422). Although the UN and the UNSC may fail, there are expectations to prevent and respond to mass atrocities. Marlier and Crawford (2013) argue that responding to intra-state conflicts means that the UNSC in any case has changed its moral frame from a territorial state to a world without borders.

The UN and UNSC are candidates for moral agency if and when they meet the following criteria. They should have: “an identity that is more than the sum of the identities of its constitutive parts”; “an identity over time and a conception of itself as a unit” and “a decision-making structure” (Erskine 2003, 7). According to these criteria, they are institutional moral agents. The UN and UNSC have capacities to bear duties. This is not, however, an uncomplicated issue, but an important one if we want to understand the workings of institutions like the UN and the UNSC and to blame or praise them for their actions e.g. respond to mass atrocities or climate change (see Erskine 2003, 7). Erskine also speaks of moral responsibility; only moral agents can have moral responsibilities. She (2003, 8) defines and divides moral responsibility into a) as ex-ante judgement – *prospective statements* concerning things the agent should do in a given situation and b) ex post facto assessment – *retrospective statements* for the agents’ acts of commission or omission, to receive blame or praise. Yet, these two statements are linked. To answer or understand both aspects means to reflect the idea regarding *how* moral agency is important in international relations (ibid.).

I take *practice* to mean, in the spirit of the ES, a social practice, which is a purposive, goal-oriented conception (see Navari 2010, 613). The term *practice* has a different meaning if used in the singular or in the plural. *Practice* (praxis/action) is a collective singular having more specific *practices* but in the singular, it refers to action in general (Kratochwill 2011, 39; Frost & Lechner 2016, 336–340). Practice/praxis provides ideas for action and more specific practices, and selecting a “good” practice is desirable (Kratochwill 2011, 40). R2P could be thought to be praxis, an end most worthy of pursuing, and its pillars I, II and III as practices. *In other words*, R2P is an *explanandum* and its pillars I, II and III are *explanans*.

Pursuing good ends requires suitable, good means (Frost & Lechner 2016; also Gross Stein 2011). This adds a moral dimension to action, and often this moral dimension is overlooked. This can happen e.g. by obeying rules strictly, doing everything by the book, meaning to work bureaucratically avoiding one’s responsibilities. Following rules strictly



could be one of the best ways to overlook the most suitable practices, as to follow the so-called best practices could be a way to avoid criticism even though the goals are not achieved. The idea of *one size fits all*, in e.g. preventing mass atrocities, would be lacking and impossible since each occurrence of mass atrocity is different. This thinking could also make things worse rather than solving them (Kratochwill 2011, 39–40; also Sending & Neumann 2011). In ES thinking, the rules requirement in identifying practices is not that important (Navari 2010, 617), as Schatzki (1996) argues. Very strict rules leave no space “for tacit understanding and silent rules” (Navari 2010, 617; see also Bull 1966).

Ralph and Gifkins (2017, 630) argue that practices should be analysed together with their normative positions. If this is not done, practices that are not fit for the purpose could be chosen and the competence aspect disregarded. They agree how practice – in a Bourdieusque sense – can contribute to the study of the Security Council and R2P. However, they criticise that practice theory has overlooked both norm theory and normative theory (see Adler-Nissen & Pouliot 2014). Analysing practices without their normative context risks misappropriating the competence aspect of the practice<sup>24</sup>. Duvall and Chowdhury (2011, 339) discuss the concept of groupthink and how the potentially problematic relationship between actors and practices as competent performances becomes exposed. In groupthink, as e.g. in the UNSC, members can give up their views for the sake of UNSC consensus to show they are team players. This can mean a lack of information which again can lead to decisions which contradict the very purpose of the group. Decisions could be made that do not fit the purpose. However, a practice concept to avoid this ought to include the question of “how best to achieve normative goals” (Ralph & Gifkins 2017, 632, 636). This is the core question in relation to R2P when the aim is to prevent mass atrocities.

Frost (2009) discusses ethical competence in international relations. Practice theory is not contributing to normative theory (see Ralph & Gifkins 2017, 634–636; Neumann & Pouliot 2011), and as it could be described, the UNSC practices could be considered “competent” although they did not succeed in collectively preventing grave violations of human rights (Ralph & Gifkins 2017, 636). However, as Frost (2009) argues, international actors like the UN and the UNSC can display ethical incompetence and thus there can be negative outcomes in response to their ethical incompetence. This could be said to have happened to some extent to the UN and the UNSC, as they have not been successful in preventing the mass atrocities that occurred (see e.g. Bellamy 2015, 100; von Einsiedel & Bosetti 2016). There has been an increase in mass atrocities (see Hehir 2017, 340), and Harrison (2016, 143) describes how R2P runs parallel to many ongoing African civil wars. The UNSC has not done well (see e.g. Paris 2014)<sup>25</sup>, nor has it borne its moral duty. Dunne (2014) asked “How it was possible to find a collective solution to the threat of chemical

24 There should be ‘standards of excellence’, standards which define the activity. Diplomacy is not e.g. “spying, shouting, threatening or ‘whacking’” (Navari 2010, 614). Competent diplomacy at the UNSC in the framework of R2P means “a collective Security Council consciousness based on the principle of protection” (Ralph & Gifkins 2017, 642).

25 See e.g. Human Rights Watch World Reports, <https://www.hrw.org/previous-world-reports>.

weapons [in August 2013 in Syria] and not to the then 1033 days of mass destruction by conventional means?”. However, looking solely at the failures can prevent us from seeing the long-term contributions the UN and UNSC have made to international order and justice (Navari & Knudsen 2018, 3; Luck 2006).

Frost (2009) speaks about how all actors should acquire and learn ethical competence to they engage in two distinctly global practices – the society of sovereign states and global civil society which echo the ideas of pluralism and solidarism. Frost argues that all major events in our time have the same pattern namely that of ethical contestation – there are claims and counterclaims – be it in relation to wars, trade or environmental negotiations, while an action’s ethical content forms part of the context through which others evaluate them (Frost 2009, 92). These claims and counterclaims are often presented in such a way that the language used appeals to joint value commitments. Frost argues that participants have a common ethical language in international practices (like R2P language). There is e.g. widespread rhetorical support for R2P (Ralph & Gifkins 2016, 632; Gifkins 2016; 2016a), but sometimes ethical arguments could be interpreted to be rationalisations or, in a hypocritical sense, using ethical language but meaning something else. Frost (2009, 93–94) sees this most disturbing, “as most actors most of the time” use ethical terms in their ethical sense (cf. Hehir 2017). This echoes Wood’s (1998) general piece of advice for interpreting the UNSC resolutions: they should be interpreted in good faith (see UN Charter art. 2, para 2).

However, although there is wide rhetorical support for R2P, related problems are not solved, and thus the question of hypocrisy and its consequences come up. Hypocrisy is usually seen only negatively (Reus-Smit 2008, 79) and could be defined as an intentionally misleading moral attitude (Lynch 2008, 170). Hypocrisy is not just lying; it can be said to contain a moral edge. As Walzer (1992, 19) states, “Wherever we find hypocrisy, we also find moral knowledge.” Analysing hypocrisy means showing how actors are hypocritical in their rhetoric or how actors are playing a type of game by using moral rhetoric to demand others to do as they do, but for their advantage (Lynch 2008, 170). As Walzer (1992, 19) put it, political leaders often stress the painfulness of decision-making, but the lies they tell are “the clearest evidence for the stability of our values”. Political leaders lie to justify their deeds to themselves and others and thus show the boundaries of justice.

However, hypocrisy can have positive effects. The lies told are part of ethical international relations; they show the limits of what is acceptable (Crawford 2002, 128). Hypocrisy can have a meaning in normative change, as actors can be ashamed of their hypocritical rhetoric. Hypocritical promises mean that actors, at some level as well as publicly, have accepted the norm in question, e.g. human rights or R2P or ending the conflict – such as the South Sudan peace agreement in 2015 (see Reus-Smit 2008, 79; Lynch 2008, 170) or, in July 2011 at the UNSC meeting, South Sudan Vice President Reek Marcher stated that “South Sudan has accepted the obligations of the UN Charter, will respect obligations of international law and will accede as soon as possible to all relevant international conventions and treaties,



especially those related to human rights” (S/PV.6583). When states sign human rights conventions, they adhere to the moral logic of human rights, at least implicitly meaning criteria for evaluating the state’s behaviour (Dower 1997, 94–95). Rhetorical concessions can refer to discursive openings that challenge actors further (Risse 2000, 32), meaning the mentioned normative change.

How can one be ethically competent in global practices? How should the UNSC act? Frost defines seven different aspects (Frost 2009, 97–100). As actors at the same time participate in two global practices, namely the society of sovereign states and global civil society, there could be tensions and conflicts between them. Frost (see also Knudsen 1999; Finnemore 2008; Wheeler 2000; Orford 2003; Welsh 2004; Nardin 2002; Badescu 2012) uses humanitarian intervention as an example of a situation in which sovereignty and human rights appear to contradict one another most strongly. As such, the UNSC faces a situation in which it must either protect the value of state sovereignty or human rights. Seemingly, the UNSC ought to choose between these two practices. Frost, however, suggests an alternative, middle, way of harmonising these two practices so tension between them could be removed or be as minimal as possible. This demands the kind of *ethical skill* that suggests social practices as having ethical coherence (Frost 2009, 99). It prompts a reminder of how R2P has defined sovereignty as a responsibility, meaning human rights standards (standards which define the activity) should be the “constitutive rules of sovereignty” (Karp 2013, 987). This also suggests that R2P practices ought to have ethical coherence so mass atrocities could be prevented. It also implies political responsibility; R2P means a shift in the normative language of responsibility (Beardsworth 2015, 71–72).

In a pluralist international society, normative pluralism refers to situational ethics, which, according to Jackson (2000, 147), does not mean moral relativism without common standards. Rather, it is “ethics of the best choice in the circumstances, or perhaps the least damaging choice if the circumstances prevailing at the time all choices are deplorable and destructive to some degree – which is common in war”. However, Reus-Smit (2009, 72) argues that situational ethics implies an underdeveloped understanding of moral choice in world politics. Our moral choices should be based on our values; abstract standards of the right and good should be referred and evaluated.

Reus-Smit (ibid.) also uses the example of humanitarian intervention when assessing judgements in moral choices. The question is mainly whether we see ourselves as having “moral obligations beyond borders” and “this cannot be decided situationally”. He continues stating (ibid.), how “abstract ethical arguments about rightful action” have an important role in intersubjective debates when discussing the values strived for. Ethical arguments give “good normative reasons” when choosing what to do (Crawford 2002, 85). This could be seen from e.g. the history of colonialism and decolonization, as it suggests that ethical arguments are an important part of international relations (Crawford 2002, 434; also Buzan 2014, 106–107, 153–156; Orford 2011).

### 1.3.1 Ethical arguments

There are different and conflicting beliefs about what is right and what is the right thing to do, as has been presented in pluralism and solidarism. These normative beliefs – e.g. sovereignty as non-intervention or equality and human rights – are manifestations of ethical arguments. They use prescriptive normative statements, principles, rules and laws, like R2P. Ethical arguments are also linked to constitutive beliefs, meaning a part of one's role like the role of the UNSC. These normative beliefs differ from norms that Crawford defines as being dominant practices of behaviour (Crawford 2002, 40–41).

I argue, following Crawford (2002, 99), that ethical arguments can be used to keep existing practices, create new fields of practice or change existing practices and normative beliefs. When ethical arguments are used to keep existing practices, they they “normalise, legitimise, support and reproduce” existing political and institutional order. Ethical arguments largely maintain and reproduce the known order as well as uphold prevailing practices that are usually institutionalised.

Existing normative beliefs could be extended to new situations or issues. To do this successfully means to frame a new situation according to the existing normative belief, e.g. sovereignty as non-intervention. For example, we do something because it is accepted, a similar situation arises, we continue to do the same thing as previously because we want to act well (*ibid.*, 99–100). As Crawford continues, one of the best ways to make something “bad” look “good” is to do it in this way. Normative beliefs, when applied to such situations, can have a very persuasive effects.

Ethical arguments can be used to change dominant normative beliefs and practices, as mentioned. However, challenging old normative beliefs (like sovereignty as non-intervention) is not easy. Ethical arguments can be used to “denormalise” or “delegitimise” the dominant norm or practice. Delegitimation refers how norms/practices are not good as such and ought to be questioned. Denormalisation and delegitimation can deconstruct the prevalent discourse and present reconstruction (e.g. sovereignty as responsibility). These new normative beliefs and practices may be institutionalised (R2P Pillars I, II and III). This kind of change can happen without a normative consensus, as not everyone needs to be convinced of this new normative belief or practice, since the effects would still be visible (*ibid.*, 100–104).

After new normative beliefs have been institutionalised (as R2P has done), practices (R2P practices) which aim to constitute them are communicated differently and after compliance they could be followed and actors become accountable. This means that at least some consensus have been reached, but there are also other ethical arguments available. Thus, actors (such as UNSC members) have to choose among different options (Crawford 2002, 105).

Ethical arguments may change practices. Institutionalisation means that new normative beliefs, at the UN and UNSC, change the discourse as they change the starting point (“R2P is the proper way to discuss mass atrocity prevention”) for future discussions and accordingly,

launch changes in politics that should be expected as the actors become accountable (ibid., 107–109). As Crawford states (ibid., 119) people are making ethical arguments when they use normative beliefs (like human equality) in their statements and when they said they have acted ethically or for ethical reasons, “they are giving ethical explanations” for what they have done.

Good ethical arguments are convincing and can show how to do things. Crawford (ibid., 85) discusses whether there is a causal relationship between normative beliefs and norms – or dominant practices – and concludes “the causal power of normative beliefs lies in ethical arguments”. There is a possibility of change but no proof. She (ibid., 123) presents a test for causality: there should be “temporal ordering” between normative beliefs and ethical arguments; there should be “a congruence between normative beliefs, ethical arguments and behaviour”; normative beliefs used in arguments should be taken seriously. There could be other ethical arguments available, and normative beliefs should be linked to other normative beliefs so they could advanced. However, even though normative beliefs and ethical arguments pass all this, there is no guarantee for causality, but of course it becomes more likely.

It has been argued that although R2P has been embedded in the international relations debate, its impact on states’ behaviour has been limited despite the success narratives told (Hehir 2017, 335). R2P is premised on the idea that “good people” encourage states to do better, but the problem, according to Hehir (2017, 350), is that states can express their support for R2P without any need to change their behaviour. As a solution to this, Hehir (ibid., 350) talks about legal and institutional reforms that would compel states to change their behaviour rather than just encouraging them to do that. The aim of R2P is not problematic; rather, the means by which the aim is achieved is the problem. Harrison (2016, 157) comes to the same conclusion that R2P makes little difference in situations of mass violence where the number of crimes against humanity, genocide and grave human rights violations has increased.<sup>26</sup> So there is a paradox which refers to the implementation issue. The question of implementation is not the research task for this study as such, although it is an important question.

Crawford (2002, 408–409, 434) argues how ethical arguments led to the end of slavery and the delegitimation of colonialism – why and how human equality and human rights were found to be more appealing than the advantages of slavery. The human needs – human security and human rights – need to rise to the top of the agenda to allow greater scope for ethical international relations (see also Dower 1997). R2P refers to human security and human rights. Crawford (ibid., 400–401; see also Finnemore 1996) considers debates about humanitarian intervention as a continuation of arguments about colonialism and decolonialism, as it presents the difficult question of “how to reconcile clashing normative

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<sup>26</sup> Hehir (2017, 340, note 37) is referring to different reports of UN bodies, human rights organizations and think tanks like the UN High Commissioner for Refugees, Human Rights Watch, Amnesty International, the International Crises Group, Freedom House, the Uppsala Conflict Data Program, and the International Committee of the Red Cross.

beliefs” (ibid. 401), namely sovereignty and human rights (see also Wheeler 2000). According to the ES and Cochran (2013, 177), different norms matter to the extent that they can be identified in existing practices. Normative and empirical studies of practices of international society must be done jointly. Standards of ethical responsibility should be found in international political practices, but neither are norms meaningless if they are not followed all the time (Spandler 2015; Björkdahl 2002).

Hehir (2017, 349) argues that “the very point of normative thinking is to advance prescriptions that may not as of yet be possible but are also not inherently impossible to achieve”. This in the spirit of E.H. Carr regarding the relationship between utopianism and realism<sup>27</sup> or Bull (1995).

Practices may change because of ethical arguments and ethical reasoning, which will be discussed next. This is considered through pluralism and solidarism by identifying pluralist and solidarist commitments in the UNSC debates.

### 1.3.2 Ethical reasoning

Normative beliefs (sovereignty as non-intervention, human equality and human rights) are manifestations of ethical arguments. Ethical arguments consist of normative beliefs that indicate what is the right thing to do, according to pluralism and solidarism. How do ethical arguments and ethical reasoning relate to each other?

Reus-Smit (2008, 67–70) refers to *ethical reasoning as a practice* constituting social life and political debate, broadening the concept from the logical deduction of principles of right conduct. I share this view and apply it in my research. He defines six criteria for ethical reasoning. Ethical reasoning starts with a definition of the moral agent (*idiography*) as one who has obligations. Since these obligations can be both burden and/or empowering, a given situation can become a highly political issue. How to respond to mass atrocities requires a definition of the problem (*diagnosis*). Reus-Smith calls this the “mapping process”, and it is as much about constructing what has happened as it is about collecting the “facts”. How the problem is seen at first, what kind of a problem conflict or mass atrocities constitute, how the situation is identified and normatively evaluated contribute to actors’ responses (see also Bliesemann de Guevara & Kostic 2017, 13). Identifying what has happened then allows for defining who bears which obligations. If mass atrocities were committed, this in turn entails different actors bearing different obligations. The definition of the process and its naming is related to moral evaluation. Is the question in South Sudan one of state-building or mass atrocity prevention?

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27 E.H. Carr (1951, 11–12) states that “The complete realist, unconditionally accepting the causal sequence of events, deprives himself of the possibility of changing reality. The complete utopian, by rejecting the causal sequence, deprives himself of the possibility of understanding either the reality which he is seeking to change or the processes by which it can be changed. The characteristic vice of the utopian is naivety; of the realist, sterility.”

There are different opinions about whether actions should be evaluated according to abstract moral principles (deontological ethical theories) or whether action should be evaluated relative to its consequences (consequentialist ethical theories), and whether these are interrelated (*consequences*) in practice or in reality (Reus-Smit 2008, 68; see also Erskine 2003, 8). Sikkink (2008, 84) argues that when combining an ethical and empirical inquiry, deontological and consequentialist concerns are closely linked. Actors construct consequences as they construct the mapping process (Reus-Smit 2008, 68), and ethical statements need “both choices of principles and evaluation of consequences in term of those principles” (Sikkink 2008, 85). If the question is *what to do*, then it needs to be asked *what is right* and *what may work* (Sikkink 2008, 85). If we want to prevent mass atrocities and abuses, then we have to prevent or end support for perpetrators, which are often governments; that would be the right thing to do. But does it work, is it politically possible, or is it wise if the aim is to develop a state capable of protecting its citizens, or would it be better just to ignore it? MacQueen (2011, 72) notes how e.g. for Sudan, the imposition of UN moral standards could represent neo-colonialism rather than state-building efforts. However, perpetrators need arms and recognition for their sovereignty. Great powers at the UNSC have often given that (Crawford 2002, 430). The United States is a penholder (see note 5) for South Sudan, and China has developed an extensive economic interest in Sub-Saharan Africa, also in South Sudan (van der Putten 2015). As Crawford (2002, 430–431) argues, if the perpetrators are to be judged, then those who supported them are to be judged. If abuses are to be prevented, then any support of those abuses should be prevented.

Actors need to choose which *principles* guide their actions when responding to mass atrocities. How should they choose these principles? Reus-Smit (2008, 68) uses the term “deliberation”, referring to the process of reasoning and its public argumentation. Ethical reasoning and deliberating the principles guiding the action happens in certain circumstances. These circumstances define *the realm of moral possibility (context)* (ibid., 69). There are always limits to moral action, and it is necessary for ethical reasoning; without moral limits, there would be no need or possibility for ethical reasoning. How actors define the limits of moral action is important; e.g. pluralists and solidarists define them differently, and this is reflected when the South Sudan conflict is analysed in the light of the ES.

As the last point in ethical reasoning, Reus-Smit (2008, 69–70) refers to weighing between *capacities* and *obligations*. Capacities could be interpreted through different lenses; capacities could be underestimated or overestimated in relation to obligations. In addition, others’ capacities could be under- or overestimated to fulfil their obligations. For example, can South Sudan take care of its e.g. judicial processes, which have a relation to the UNSC practices? All the mentioned six issues – idiography, diagnosis, consequences, principles, context, and capacities – are important in the practice of ethical reasoning. Reus-Smit (2008, 81) further states how this ethical reasoning could contribute to the analytical resources of the ES in its empirical ethical reflection. Ethical reasoning is embedded in the practices chosen.

The UNSC practices must be interpreted in the normative context created as and when states committed to R2P. How is the UNSC able to harmonise the plurality of values, the normative competition showing its ethical competence, or R2P competence to prevent and respond to mass atrocities in South Sudan?

As stated earlier, the UNSC has a discursive function providing “a place for contestation and deliberation when the international community is divided on how to address threats to peace” and thus being a center for the discursive process to manage tensions (Johnstone 2017, 229). Responding to mass atrocities in an ethically competent way requires building and maintaining a cosmopolitan consciousness (Ralph & Gifkins 2017, 640). Cosmopolitan consciousness,<sup>28</sup> for its part, constructs a different concept of sovereignty than the traditional sovereignty as it institutionalises the acceptance of the common morality of human rights through human rights instruments and the UN (Dower 1997, 109–110). Of course, taking human rights into consideration does not solve the problems related to them or their grave violations (Ignatieff 2001), but it gives them a chance. Chandler (2004) has been deeply critical of R2P in saying, for instance, that it does not mean an emergence of a global humanitarian conscience but rather the liberal peace thesis, which implies a new balance of power in the post-Cold War world.

As practices are sources of meaning and normativity (Schatzki 2000, 21), the UNSC practices are argued to have a meaning in the prevention of mass atrocities and thus affect the nature of international society and contribute to the aim of the UN.

## 1.4 Research material

As this research deals with mass atrocity prevention in the South Sudan conflict in Africa and in particular with the UNSC practices, while the period is 2011 to 2015, some choices have already been made. The majority of the material is from the time frame under study (key texts) with material which traces the development of the principle of the responsibility to protect, thus creating a context for R2P (see Hansen 2006). Neumann (2008, 63–70; see also Crawford 2004) speaks of cultural competence, which refers to general knowledge and understanding of the issue in question to contextualise the research question.

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28 Cosmopolitanism (see Appiah 2006) refers to the idea that people have obligations to each other beyond those who are near and that values, universal values, should be taken seriously, but at the same time there is a commitment to pluralism which is a value as such. Cosmopolitanism relates what is human in humanity. Bull (1995, 80–89) sees cosmopolitan justice as a problematic when he discusses the compatibility of order and justice. The UN supports international justice and human justice but “the framework of international order is quite inhospitable to project for the realization of cosmopolitan or world justice” (Bull 1995, 83). But at the same time, “(...) it is not basically unfriendly to notions of interstate or international justice” (ibid., 87) and comes to the conclusion that “There is no general incompatibility as between order in the abstract, in the sense in which it has been defined, and justice in any of the meanings that have been reviewed” (ibid., 89). Regarding the concept of cosmopolitanism, see also Toivanen 2014, 129–132.



There are texts which can be named as *landmark texts* – the International Commission on Intervention and State Sovereignty (ICISS), *the Responsibility to Protect*; The Report of the International Commission on Intervention and State Responsibility (2001); *Our Shared Responsibility*; the Report of the Secretary-General’s High-Level Panel on Threats, Challenges and Change (2004); the Report of the Secretary-General, *In Larger Freedom: towards development, security and human rights for all* (2005); *World Summit Outcome Document 2005*; Secretary-General Ban Ki-moon’s *Berlin Speech* (2008), *Reports of the Secretary-General 2009–2015 on Responsibility to Protect; Framework for Analysis for Atrocity Crimes: A Tool for Prevention by Special Advisers on the Prevention of Genocide and on the Responsibility to Protect* (2014), selected UNSC resolutions.<sup>29</sup> All these documents outline the conceptual development of R2P. The general context for R2P’s normative development is framed by developing the prevention of armed conflict and protection of civilians’ agenda based on earlier documents (from late 1990 onwards) and other selected UN documents.

The key texts for the period of the study 2011 to 2015 consist of UN documents from South Sudan:

- UNSC resolutions
- respective UNSC meeting records
- presidential statements of the UNSC
- Secretary-General’s reports for Sudan (selected) and South Sudan
- UNSC press statements
- selected UN General Assembly (UNGA) documents
- selected Human Rights Council (HRC) documents
- selected High Commissioner for Human Rights (OHCHR) reports
- United Nations Mission in the Republic of South Sudan (UNMISS) reports
- South Sudan Sanction Committee documents
- selected documents from the Office of The Special Advisor on The Prevention of Genocide and Responsibility to Protect
- Security Council Report’s *Monthly Forecast* from 2011 to 2015. This publication provides monthly reporting on the Security Council’s current and prospective programme of work.

The UNSC resolutions are the most important peace-maintaining instruments, as they are also the most common way to get “results” to certain political questions. They are negotiated statements of the “intent, resolve, concern, or action” of the UNSC, and their drafting is an intense political process. The UNSC resolutions are important documents of international politics, although they are not always fully followed by member states (see Hurd 2007, 4–5; see also Wood 1998; 2017; Stoor 2005).

Presidential statements express the consensus of the UNSC, and they have been called consensus statements and used since the early 1990s. Talmon (2003, 420) discusses how the

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<sup>29</sup> UNSC resolutions referencing R2P: 1674 (2006); 1706 (2006); 1894 (2009); 1970(2011); 1973 (2011); 1975 (2011); 1996 (2011); 2014 (2011); 2085 (2012); 2121 (2013); 2039 (2013); 2149 (2014); 2149 (2014); 2150 (2014).

UNSC has a new instrument to give its views when willing to send messages to the parties of a conflict or to the whole international community.<sup>30</sup> Presidential statements can have an important role in political processes as they can ease tensions or pay attention to most difficult issues – ethical skill in Frostian terms – when it would not be possible to adopt a resolution. The Security Council can also use stronger language in presidential statements than in resolutions (ibid., 456–457). As Talmon argues (ibid. 458), presidential statements are an essential part of the UNSC response system, there are presidential press statements, presidential statements and resolutions available for the UNSC. Talmon’s argument is that presidential statements and resolutions constitute “proper Council action” (ibid.), and they should be read and interpreted together with respective meeting records and Secretary-General reports (Wood 1998; 2017).

## 1.5 The structure of the study

After this Introduction, *Chapter 2* discusses in depth ES as an approach to international relations, especially the international society approach and the pluralist and solidarist conceptions of international society and how R2P could be approached from these perspectives. Primary and secondary institutions of the ES, UN, UNSC and ICC are discussed as the constructing elements of the ES. R2P is discussed and defined as a procedural institution of international society, sovereignty, human rights, and great-power management as its basic principles, which are at the same time institutions of international society.

*Chapter 3* analyses the normative framework of human protection, three overlapping agendas of conflict prevention, protection of civilians (PoC) and responsibility to protect (R2P), and mass atrocity prevention at the UN and UNSC. Conflict prevention and PoC form a context for the evolution and development of R2P. The responsibility to protect is presented as a three-pillar strategy, and these *three pillars as discursive practices of R2P*. This chapter discusses how UN and UNSC practices constitute R2P.

*Chapter 4* contextualises the South Sudan conflict and conflict history and presents different conflict narratives which help elucidate the prevailing conflict. South Sudan conflict discussions in the UNSC are looked at in light of the ES theory of institutional change, especially through the notions of pluralism and solidarism. UNSC (social) practices in South Sudan are analysed and interpreted as to how they construct R2P and whether they reproduce or change the basic principles of R2P – human rights, sovereignty and great-power management – which are, at the same time, the primary institutions of international society and thus effect the nature of international society. Political debate at the UNSC is understood as ethical reasoning reflecting the moral space, making it possible

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30 Regarding the growing meaning of presidential meaning, see Talmon (2003) and Milanovic (2009).



to evaluate whether UNSC practices are R2P-competent practices (sub-chapter 4.4; see also sub-chapter 1.3).

*Chapter 5* concludes the main contributions of the study as related to the role of secondary institutions in the ES theorising, to the theory of institutional change and ethics and how the UNSC practices of R2P can contribute to responding to mass atrocities and human protection.

## 2 R2P and international society

This chapter discusses 1) how the principle of R2P relates to the theory of the English School and 2) how primary and secondary institutions of international society – specifically, sovereignty, human rights and great power management – and the UN are related and produce continuity and change in international society which allows, therefore, the possibility of developing a consensus around R2P principle and a framework for mass atrocity prevention (see Knudsen 2015; 2016; 2018; 2018a; Orford 2011).

In this study, R2P is defined as a procedural institution, “repetitive practices, ideas and norms that underlie and regulate interactions and transactions between the separate actors” (Holsti 2004, 25). This kind of procedural institution refers to behaviour towards one another in times of both peace and conflict (*ibid.*). It could be argued that R2P is increasingly becoming a standard for that behaviour expected from different actors, both state and non-state (Luck in Rothberg 2010). Knudsen (2016; 2018; 2018a) argues that the 2005 World Summit adoption of R2P meant humanitarian principles were to be considered in the machinery of international society. I further suggest that R2P as a procedural institution has qualities beyond repetitive or reproductive practices.

Sovereignty, human rights and great power management are the basic principles of R2P, and, at the same time, they are the primary institutions of international society (see Palmujoki 2018). R2P practices are discussed in terms of three pillars (UNSG 2009) (see Chapter 3).

## 2.1 International society and the Responsibility to Protect in light of pluralism and solidarism

### 2.1.1 The English School and the concept of international society

The history of the English School goes back to the British Committee on the Theory of International Politics (Butterfield & Wight 1966; see also Dunne 1998; Waever 1998; Buzan 2001; Linklater & Suganami 2006). Twenty years ago, Barry Buzan (2001, 471–472) gave a presentation on how the English School (the ES) had not gained the recognition it has rightfully deserved in IR research. Now, however, the ES is established as a distinctive approach to IR (see e.g. Linklater & Suganami 2006; Dunne 2007; 2008)<sup>1</sup>. Barry Buzan has developed and clarified the ideas, concepts and theories of the ES. Peter Wilson (2016, 94) comments on how Buzan's newest book, "An Introduction to the English School of International Relations", (2014) builds on his previous one, "From International to World Society? English School Theory and the Social Structure of Globalisation" (2004), providing "a state of debate" regarding the international society debate and pluralist-solidarist divide linking these efforts to the ES classics<sup>2</sup>.

The English School's main contribution to international relations is international society perspective (Linklater & Suganami 2006, 15). ES thinking has three main concepts: international system, international society and world society (see e.g. Buzan 2004; 2014; Bull 1995; Wight 1991). Martin Wight (1991) named the three traditions of international theory as realists, rationalists and revolutionists, three interdependent conditions of international relations. He sums up the theory of international society, saying "For the Realist, it is '*bellum omnium contra omnes*' (Hobbes); for the Rationalists, '*societas quasi politica et moralis*' (Suarez); and for the Revolutionists, '*civitas maxima*' (Wolff)", or as he says in a short version, respectively, "1. It is not a society, rather an arena; 2. It is a society, but different from the state and 3. It is a state (or ought to be)" (Wight 1991, 48).

The most important thing about the normative foundation of international relations is that international society and a global polity, or world society, exist at the same time (Brown 2015, 13–14). As Brown (2015, 14) argues, this state of affairs does not contribute to peace but more to conflict and disharmony.

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<sup>1</sup> In "Inventing International Society. A History of the English School", Dunne (1998, 3–11) opens the closure of the English School and articulates 'family resemblances' shared by the members of the English School, namely there is a particular tradition of inquiry, there is an interpretive approach and international theory is understood as a normative theory. Dunne's (1998, 16) motivation for writing his book was to understand the role of the English School in the discursive history of the discipline rather than call for the IR community to take English School seriously. About the evolution of the English School see also Waever 1998; Linklater & Suganami 2006; Bellamy 2005; Buzan 2004; 2014. Regarding international society and its critics, see Bellamy (2005); Dunne 2008, 279–282.

<sup>2</sup> To the classical writers of the English School belong Herbert Butterfield, C.A.W Manning, Martin Wight, Hedley Bull, John Vincent and Adam Watson. Wight, Bull and Vincent – axis has been called as a classical approach in IR (see e.g. Epp 1998).

Bull (1995, 13) defines international society, saying,

A society of states (or international society) exists when a group of states, conscious of certain common interests and common values, form a society in the sense that they conceive themselves to be bound by a common set of rules in their relations with one another, and share in the working of common institutions.

International society depends on its working of rules, norms and institutions. To refer to international society is a way of highlighting “the norm-governed nature of relations between states” (Brown 2003, 52). Bull’s idea of international society is part of a bigger tradition, namely the Groatian tradition which sees international politics through the lens of international society (Bull 1995, 25; also Bull 1966, 51–93; Bull 1990, 65–93; Bull, Kingsbury & Roberts 1990). Bull (1966, 51) also sees that this kind of conception of international society goes back to the Covenant of the League of Nations (1919), The Kellogg-Briand Pact/the Paris Pact (1928), the United Nations Charter (1945) and the Charter of the International Military Tribunal at Nuremberg (1945).

The international society approach is a specific concept and way to theorise international relations. Its definitions vary. For Bull, international society is an idea; it exists if states and leaders believe it exists and act accordingly. International society exists through its practices which get their meaning through the work of common institutions (Jones 1989, 53; see also Alderson & Hurrell 2000, 1–19). The concept of practice has given a theoretical basis to Bull’s concept of institution. Cornelia Navari (2010, 613) defined the ES concept of social practice as “a purposive, goal-oriented conception” which is different than causal concepts of practice. The ES concept of practice is, accordingly, a telic notion. The practice concept has been taken into consideration, so to say, *all time* in ES scholars’ writings but only recently an understanding of institutions as practices has grown, as discussed in Chapter 1.

For example, Holsti (2004, 21) speaks of institutions as “patterned practices, or practices that are routinised, typical, and recurrent”. Knudsen (2013, 16; 2016, 104; see also 2018; 2018a) defined primary institutions by differentiating between constitutive principles inherent in primary institutions and an associated set of practices by which they are reproduced.

Institutions cannot exist apart from state and non-state practices. Agents’ practices *constitute* institutions, and as Wendt and Duvall (1989, 63) argue, an analysis of international institutions must begin with an analysis of their practices (cf. Orford 2011). These practices do not comprise institutions because “institutions are a set of principles that underlie and shape practices”. However, they create possibilities for institutions and thus (the practices) “form raw material for theorizing about the constitutive and organising principles that define concrete international institutions”. Wendt and Duvall (*ibid.*) argue that institutions and practices are “codetermined”, like structures and agents. All practices presuppose institutions, and all institutions presuppose practices.

International society is “what states make of it”; it is a social construction (Wendt 1992; Dunne 1995, 384). The ES is argued to have been constructivist before constructivism in

IR was established, but the relationship is complicated (see also Reus-Smit 2002; 2009). So by analysing the practices of international society, it could be understood what kind of international society exists – whether pluralist, solidarist or both at the same time.

There are different interpretations of international society. When theorizing about this concept, the debate concerning pluralism and solidarism comes up, with questions of order and justice (see Bull 1966; 1971; Wheeler 1992; Dunne & Wheeler 1996; Wheeler 2000; Bain 2014; Hurrell 2014). The question is on what kind of rules, norms, values and institutions should international society be based, and normative inquiry of their relation is thus important (see Reus-Smit 2002, 490).

These essential concepts of rules, norms, values, and institutions are often used interchangeably, as they have a common goal: they shape expectations about behaviour (Buzan 2004, 163). There has been a discussion of whether R2P is a principle, a norm or an emerging norm and whether, if it is a legal or political norm. Alex Bellamy (2009, 4–7) suggested speaking of R2P as a concept after the ICISS Report in 2001 and before the World Summit in 2005, and as principle after the summit (cf. Breakey 2012, 19). Referring to R2P as a norm, it is considered to have a more established status, and in “UN language”, a norm has a legal status. R2P as a concept means, argues Bellamy (2009, 6), that it is subordinate to sovereignty and non-intervention while as a principle, it has the status that could change the very meaning of sovereignty. In this study, R2P is considered a principle, and principles and norms are sometimes used interchangeably (see also Bellamy 2015; Labonte 2016).

Bellamy (2015, 62), like Buzan, defines norms or principles as “understandings of the appropriate behaviour shared by members of a group”. However, R2P could be said to be a collection of norms which place different expectations on different actors. The Secretary-General, in his report, “Implementing the responsibility to protect” (UNSG 2009), outlined a three-pillar strategy for R2P. Pillar I imposes expectations on a state to protect its own citizens, an internal responsibility to protect, while pillars II and III impose expectations on states as members of the UN to assist and encourage others to fulfil their responsibilities and to take timely and decisive action in cases of R2P crimes, meaning the international responsibility to protect. R2P’s first pillar is a highly determinate norm, and pillars II and III are indeterminate norms because they depend on the context: it is not clear what R2P entails in a given situation. However, UNSC practices and expectations regarding R2P practices are making them clearer (Bellamy 2015, 63; Breakey 2012, 19). The more precise a norm, the stronger its compliance pull (see also Hehir 2016). This refers to the notion of *deeds to words*; how practices and discourse or discourse as practices construct R2P (Orford 2011, 2; see also Welsh 2013).

International society, in order to be a society, needs rules and practices to prevent mass atrocities (see Knudsen 1999; 2013; 2015; 2016; 2018; 2018a) and R2P could mean that (Bellamy 2014; cf. Chandler 2003; 2004; 2009; 2010).

### 2.1.2 The Responsibility to Protect – R2P

Mass atrocity crimes – genocide, war crimes, crimes against humanity, and ethnic cleansing – are often a consequence of long-standing human rights violations. R2P can be considered a principle that establishes how to approach preventing genocide and mass atrocities and responding to these crimes (Bellamy 2015, 11).

Some have argued that R2P is the only orthodox way to discuss mass atrocities at the UN (Brown 2013; 2015). At the same time, there is a challenge concerning R2P, which is a question of competing norms of international society, namely human rights and sovereignty. Newman (2013, 242–243) discusses “conflicting worldviews”. A state may advance solidarist arguments in one situation and pluralist in another because there is a confusion of inconsistent practices and different conceptions. This means an evolving conversation about the guiding norms of international society (Bellamy 2003, 8–9). In the UNSC, there can also be normative pluralism, as there is no consensus in the Council regarding the importance of relevant norms and which norms should be followed. Situations are complex and difficult, but this also reflects the extent to which R2P has “compliance pull” in international society (Bellamy 2010, 153–154). Understanding this can help with comprehending the paradoxes in international society and the inconsistencies of the practices relative to the rhetoric of e.g. humanitarian intervention (Bellamy 2003, 17).

However, although R2P has been institutionalised at the UN since 2005, it is not without problems. Norms are intersubjectively held beliefs, they are constantly contested, and practices shape their meanings in social contexts (Welsh 2013, 380). Also, power impacts the meanings given to norms. Welsh (*ibid.*, 382–386) distinguished two forms of contestation in the implementation phase of R2P, both of which reflect power dynamics: procedural contestation and substantive contestation. However, norms are open to contestation and evolution according to how they are used.

R2P was created to overcome this contradiction, this tension between solidarist and pluralist thinking, by creating a new normative framework. Nonetheless, this tension is still relevant to understanding political problems which exist in the prevention of mass atrocities. However, the institutional structure of international society is such that it consists of both pluralist and solidarist interaction (Knudsen 2013; 2015; 2016; 2018; 2018a; see also Newman 2013; Bellamy 2003).

R2P has the potential of adding “political momentum” to new processes, as it was never meant to be a new norm but rather to spur action when mass atrocities occur and to overcome the reluctance to refer to genocide and mass atrocities as a reason for intervention (Francis & Popovski 2012, 87–88) as was the case in Darfur. R2P recognises a “duty of conduct” (see Welsh 2013, 387) and is framed in terms of crimes which set normative boundaries for any community. One of R2P’s important functions is to provide guidance as to what is appropriate and what is not (*ibid.*; see also Labonte 2016).

R2P does not mean any new legal obligations upon states, but it raises significant legal questions (see Orford 2011, 25–29; see also Rodley 2016; also Schmidt 2018). According

to Ed Luck (2010, 109), R2P should rather be understood – both by advocates and critics – as a political concept “based on well-established legal principles and norms” such as international human rights, humanitarian law and refugee law.

Anne Orford (2011) speaks of R2P as a concept. She considers the ICISS Report (2001) a normative statement of an international authority undertaking executive action for protective ends. As R2P was adopted unanimously by the General Assembly at the World Summit Outcome of 2005, the UN is now committed to the project of “implementing the responsibility to protect” (UNSG 2009, para. 4). The aim is not to develop new actions to implement the idea of protection (see Ch. 3). Instead, R2P is trying to integrate existing “but dispersed practices of protection into a coherent international authority” (Orford 2011, 2). This approach is contrary to what has been stated by different authors, and by the Secretary-General, that it is time to put *words into deeds* (Bellamy 2011) or *promise into practice* (see e.g. Bellamy & Luck 2019). Orford (ibid.) argues instead that “the significance of R2P is not in its capacity to transform promise into practice but rather its capacity to transform practice into promise, or deeds into words”. Orford continues that the aim is to develop a conceptual framework to systematise what international actors have done in the decolonised world since 1960, especially at the UN. This could also be seen as the main objective of the entire UN. This approach, from “deeds into words” or from “practice to promise”, is also adopted and applied in this study (cf. e.g. Richmond 2007).

Orford (2011, 27; 16; 28) further develops the idea that, according to R2P, since states are responsible for their own people, the UN is responsible for all people, the whole international community. States have an obligation to protect those within their territories from genocide and other mass atrocities as reflected in the Genocide Convention (1948), international and regional human rights treaties and the laws of war. According to R2P, both states and the international community<sup>3</sup> get their authority from their “capacity to provide effective protection for populations at risk”. That is exactly what the UN should stand for. R2P, understood in this way, also implies that it fulfils the basic function of the UN – to maintain international peace and security according to the UN Charter, Article 1(1).

R2P is often criticised, not least because it could be misused by powerful states<sup>4</sup> (Orford 2011, 28; Evans 2008, 56–64; Chandler 2010; Welsh 2013, 389–390; Hehir 2015; Cunliffe 2016). The Secretary-General, in his report (UNSG 2009), made a statement regarding how “to develop fully the United Nations strategy, standard, processes, tools and practices for the responsibility to protect” as a means to best avoid misuse of the concept (cf. Badescu & Weiss 2010). To understand how R2P is normatively important to international society

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<sup>3</sup> “International *community*” is an empirical concept (see e.g. Annan 2002; Menon 2009), “international *society*” a theoretical concept.

<sup>4</sup> There have been many misuses by powerful states, e.g. the Iraq wars, the Ukraine-Russia case on Crimea, Ukraine conflict, but R2P was not mentioned in these connections. The Libya case (2011) is different, it is called a “R2P-case” and is criticized on many terms, also that it was not a proper R2P case (Ralph & Gifkins 2017).



is “to understand the practices it seeks to rationalise and make coherent” (Orford 2011, 34). R2P changes the meaning of sovereignty from sovereignty as control to sovereignty as responsibility (ICISS 2001, 2.14–2.15).

It can also be argued that R2P is implicitly present in the UN Charter, which has been defined as a bridge between pluralism and solidarism, between sovereignty and human rights. The Charter implies tension between the principles of state sovereignty and human rights. Article 2(7) is an attempt to bridge these two conceptions of international society (Mayall 1996, 4–5; see also Roberts 2003, 49–56; Conlon 2004).

The intellectual roots of R2P are to be found in human security (see UNDP 1994; also Makinda 2005; Seppä 2011) reflecting the idea that when the UN develops a new idea, it can become part of the debates, an idea which otherwise could have been ignored (Jolly, Emmerij & Weiss 2009, 164). Human security is a core component of the contemporary debate on the meaning and definition of security. The so-called narrow school of human security – freedom from fear – is clearly connected to R2P, thus supporting the practices of R2P (Kerr 2010). Human security is people-centred (see Makinda 2005; Okolo Ben Simon 2008; Kerr 2010; also Chandler 2001); yet, both the human security and state-centric approaches relate to the understanding of security (Kerr 2010, 117) and understanding R2P (see also Weinert 2011).

Some have criticised how human security first constituted a challenge for the state-centric nature of the international system, but how R2P maintains now the status quo and treats the UN as a state-based system and thus as unchangeable (Hehir 2015). Nasu (2013) argues that it might be difficult to take the idea of human security to inform the operation of the UN’s collective security system (see Thakur 2006; 2015). However, the idea of human security has now been mainstreamed in UNSC debates and practices.

This reflects the norm contestation of R2P in the UNSC despite its high level of institutionalisation (2005), and despite the fact that R2P is now a part of global discourse. The UNSC practices of R2P illustrate this norm contestation and difficulties in finding consensus on R2P (see Welsh 2010). Accordingly, it could be said that R2P involves contradictions to the UN practice itself. Also, this illustrates the constructivist idea that the principles and concepts are changeable and developing. There are no end points, “the game continues to unfold” (Fierke 2001, 129; see also Makinda 2002).

Human security has extended the referent of security from states to individual humans; it has also extended the substance of security from its focus on military affairs to other issues like criminality, human rights, economic and environmental threats, and this has caused problems (see ICISS 2001, 2.2.1; 2.23; MacFarlane 2007, 352).

Human security concerns have had many consequences, both normative and legal. Norm-setting related to human security issues falls, according to MacFarlane (2007, 353), into three categories. *Firstly* there are a growing number of state treaty commitments regarding the security of civilians (e.g. the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction



(1997); The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts (2000); and the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (1984)). *Secondly*, it refers to the international accountability of individuals acting in the name of a state. The Treaty of Rome established the International Criminal Court (ICC), rooted in Nuremberg and growing out of the International Criminal Tribunals for Yugoslavia and Rwanda. International prosecution of individuals accused of war crimes or crimes against humanity is possible when their national authorities either will not or cannot do so. This relates directly to R2P and there is a role for the UNSC, which can refer a situation to the ICC. Moreover the UNSC invokes a jurisdiction of the ICC even in cases that involve a non-state party. The Treaty of Rome expanded the jurisdiction of an international tribunal to include cases involving violations of human security. This division of labour looks ideal in the fight against human rights violations, but the relationship is more complicated than that (Mills 2014, 10). This issue will be discussed more in Chapter 3 and is noticed in the analysis of UNSC practices in South Sudan in Chapter 4.

*Thirdly*, in human security norm-setting, one of the most relevant issues is the UNSC changing definition of threats to international peace and security: the conventional understanding holds up until the Council decides that a situation in a country constitutes a threat to international peace and security, and the Council needs to act accordingly (see also Wellens 2003).

Bellamy and McDonald (2004) have criticised how the English School has not paid enough attention to security, (cf. Makinda 2005; see also Buzan 2010), and their aim is to explicate the ES discourse on security. They conclude that there is an ES discourse on security with its internal division between pluralist and solidarist discourse. The ES's approach to security follows the pluralist and solidarist division, whether the question is the security of states or security of individuals. Three key ideas frame the ES discourse on security: firstly, it is a normative value as such; secondly, it is socially constructed and thus there is no fixed foundation and thirdly, whether a pluralist or solidarist orientation, international society can produce different conceptions and practices of security (Bellamy & McDonald 2004, 311–312). This makes human security possible.

The question is, what are considered security problems? Dunne and Wheeler (2004, 16–18) discuss “global human wrongs” (see also Booth 1995) which are (or are not) considered security questions. Pluralist discourse on security and human rights do not consider as security problems so-called “global human wrongs” (see also Jackson 2000). However, the human security discourse sees the complexity of the sources of harm. There are military and non-military sources of harm, and there is interdependence between security and human rights.

Solidarist security discourse focuses on justice and human rights, and this means the possibility to mitigate human rights abuses and question the centrality of a state as the primary referent of security. However, ES discourse on security, whether pluralist and

solidarist, offers opportunities to discuss international order and justice, sovereignty and human rights and how they interact (Bellamy & McDonald 2004, 326–327).

### 2.1.3 A pluralist and solidarist reading of international society

It has been argued that all the ES scholars from Bull (1977; 1984) to Wheeler (2000) have been looking for a potential for moral action in international society that contributes to the debate between pluralists and solidarists (Reus-Smit 2002, 490).

In normative theorizing, things differ from how they should be, and how they are does not make them right. Normative principles must have autonomy from how things are, otherwise, they would lose critical value. This means, for example, if human rights are violated often, it does not mean that human rights do not or should not exist. How to think about the limits and possibilities of moral action means that “some moral principles are more viable than others” (Reus-Smit 2011, 1215). This argument is an important one when thinking of R2P. Human rights are “power mediators” (Reus-Smit 2011, 1210) and weapons “of the weak against the strong” (Vincent 1986, 17). Human rights provoke arguments by challenging the prevailing terms of political legitimacy (Reus-Smit 2011, 1211; also Orford 2011). Human rights have become “a standard of civilization” (Donnelly 1998), and there would be a global consensus, or overlapping consensus, that human rights constitute a standard of political legitimacy (Reus-Smith 2011, 1216). This overlapping consensus is not “a natural virtue but an intersubjectively generated commitment”. According to constructivism, there is no inherent tension between state sovereignty and moral principles related to the promotion and protection of human rights. This relates to the constitutive nature of international society as states shape and are shaped by shared norms and values. Thus, constructivists argue that if “states reject universal values”, they have to bear some kind of condemnation to implement this “new standard of legitimate statehood”, human rights (Dunne & Hanson 2016, 46–48).

In international society, debates about order and justice, human rights and (non-) intervention centre on two concepts of international society, pluralist and solidarist, as has been mentioned. They are not opposing positions, rather they constitute normative framing principles “about the limits and possibilities of international society in the ES” (Buzan 2014, 84). Buzan continues (*ibid.*, 86), that “they are two sides of an ongoing, and permanent, tension in the subject matter of International Relations around which the normative and structural debates of the English School is organized”. Pluralism and solidarism have also been seen as opposite positions. Bull himself did this in his landmark essay, “The Groatian conception of International Society” (1966) where he originally introduced the idea (see also Buzan 2014, 119–120). However, de Almeida (2003) and Alderson and Hurrell (2000) argue that Bull was “aware that a legitimate and workable international society ought to be, simultaneously, pluralist and solidarist” (see de Almeida 2003, 146; also Bain 2007; 2014; Wheeler 1992; see Bull 1984; also Makinda 2002). In his “Hagey Lectures” (1984), Bull

summarises his solidarist position noting how rights and duties of individuals exist together with the rights of states, which shows a change in international society (see Bain 2014, 160). Although he saw a danger in promoting human rights at the expense of coexistence among states, Bull was of the opinion that states have the responsibility to promote this idea of human rights (see Bain 2014, 161; also Makinda 2002).

Bull in “Anarchical Society” (1995, 4–5, 19) discusses goals of social life, and among them is security against violence. Further, the goal limiting violence results in the Just War doctrine (see e.g. Walzer 1992). Thus, as de Almeida (2003, 147) interprets “to pursue one of its fundamental social goals, international society needs normative *solidarity*”. However, this solidarity has to coexist with political *pluralism*. Historically, solidarism and pluralism have coexisted during the evolution of modern international society (Jackson 2000; see also de Almeida 2003); this could also be noticed from the UN Charter and even earlier (see Makinda 2002a, 119). As mentioned, Mayall (2001, 4–5) sees the UN Charter as an attempt to bridge these two conceptions of international society. Order and justice as well as pluralism and solidarism have yin and yang qualities, they all need each other. Each position implies how things should be; it is a question of practice-guiding theories (Buzan 2014, 84).

Bull first discussed pluralism and solidarism in his mentioned essay “The Groatian Conception” (1966) and defined them. According to Bull (1966, 52–53) three things differentiate these two versions of international society, namely the institution of war, sources of international law and status of individuals as against the claims of states. Although in pluralist conception, states are not able to agree with substantive goals and values, they know “they are morally and legally bound by common code of co-existence” (Wheeler & Dunne 1996, 95). The solidarist conception of international society was to Bull (1966) a purposive one because it seeks to reserve the use of force to “the collective will of states”, and while pluralism emphasises the rights and duties of states, solidarism emphasises the rights and duties of individuals. According to Wheeler and Dunne (1996, 95), these two different ideas can be identified in this “collective will of states”. The first refers to the collective security system of solidarism, and the second refers to a deeper level which might challenge the non-intervention principle. Thus, states “are burdened with the guardianship of human rights everywhere” (Bull 1966, 63; Wheeler & Dunne 1996, 95; see also Wheeler 1996). However, both pluralism and solidarism accept international society with its laws, norms and principles which mean obligations to its members (Bain 2014, 159). This aspect differentiates a pluralist position from a realist one.

## 2.1.4 R2P in the light of solidarism and pluralism

It could be said that R2P puts people first, defines sovereignty as responsibility, emphasises human rights, and its intellectual roots are in human security. Wheeler summarised (2000, 12) the solidarist idea to be that states which make grave human rights violations lose their

right to be treated as legitimate sovereigns, thus giving other states the right to use force to stop these violations, namely humanitarian intervention (see & cf. Orford 2011, 41). These very ideas are reflected in R2P, as there is also a possibility for the use of force (pillar III). However, R2P does not abandon a state, but wants to strengthen it (see Luck 2009; also Hehir 2015). As a matter of fact, all three pillars of R2P reinforce this aim, and Piiparinen (2012) calls this the sovereignty-building paradigm.

John Vincent in his “Human Rights and international relations” (1986, 126) argued that “basic human rights should be understood as the floor beneath states rather than the ceiling above them” (see also Gonzalez, Pelaez & Buzan 2003, 333). Vincent’s text is considered the most important theoretical contribution to the issue of justice approached through human rights (Reus-Smit 2011, 1205). According to Vincent, the litmus test of the normative value of international society is its ability to protect basic rights (Wheeler 1992, 478–479). Vincent’s basic rights idea has two dimensions. The first refers to the right to security (freedom from oppression) and the second refers to the right to subsistence (freedom from starvation). For Vincent, the “right to food” is the base of his basic rights project. From the solidarist viewpoint, Vincent made the human rights agenda visible and important (Gonzalez, Pelaez & Buzan 2003, 321–322). He argues that “the idea of human rights is the key to our understanding of the central political debates of the late twentieth century” (Vincent 1994, 31). This relates directly to R2P as the right to security – freedom from oppression, referring to the human security idea, “freedom from fear”, and right to subsistence – freedom from starvation, to the other human security dimension “freedom from want”. R2P has its origin in the idea of “freedom from fear” (see e.g. Kerr 2010). However, starvation could be called “silent genocide” (see Gonzalez, Pelaez & Buzan 2003, 325), especially when famine or food shortage is man-made<sup>5</sup>. Tim Dunne and Nicholas Wheeler (1996) opened the pluralist-solidarist distinction, and Wheeler’s book “Saving Strangers. Humanitarian Intervention in International Society” (2000) is considered to be the key solidarist text (Bain 2014, 161; see Brown 2015; Gallagher 2015).

Wheeler (2000) contributes to the solidarist interpretation by discussing humanitarian intervention as a legitimate practice in international society. According to Wheeler (2000, 1), there is a “gap between normative commitments and instruments”, which means governments can make grave human rights violations with impunity. Humanitarian intervention might be the *only* way to enforce the global humanitarian norms developed since World War II, (see Orford 2011), but this is a problem related to the established principles of non-intervention and the non-use of force. The solidarist conception of moral

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5 In June 2017, the International Crises Group (2017) noticed how, for the first time in three decades, four countries, Yemen, South Sudan, Somalia, and Nigeria, which were driven by war, were also suffering from famine. The UNSC (2017) held the Arria-Formula Meeting on the risks of famine in these countries: the situation constitutes a major protection crisis, and these four food crises are the result of wars. In South Sudan, 100.000 people were experiencing famine, while 1 million are on the verge of famine. In total, 5,5 million people (half the population) face food insecurity. These Arria-Formula Meetings (since 1992) are informal meetings where UNSC members get information from people outside the UN. As the meeting are informal, there is a possibility to discuss sensitive topics (SCR 2017, 12).

possibilities of international society sees that “individuals have rights and duties according to international law, but [...] individuals can have these rights enforced only by states” (Wheeler 2000, 11). This means that states should not have the moral responsibility to protect the security of only their citizens only but should also be the “guardianship of human rights everywhere” as mentioned (Bull 1966, 63; see Wheeler 2000, 11–12; also Dunne & Wheeler 1996). Pluralists consider (Wheeler 2000, 11) humanitarian intervention as violating sovereignty, non-intervention and non-use of force; “rules of international society provide an international order among states sharing different conceptions of justice”.

Since the Cold War, state-building has been an answer by international society to solve humanitarian crises (de Almeida 2003, 161). Piiparinen (2012) argues that there is an emerging paradigm of “humanitarian sovereignty-building” which differs from traditional state-building whereby *a state* is at the center of the discussion (pluralism) but in “sovereignty-building”, *people* are at the center of the discussion/analysis, and they are to be protected from irresponsible leaders. The UNMISS mandate in resolution 1996 from July 2011 in South Sudan is a state- and peace-building mandate. There has been criticism that this state-building approach concentrating on state institutions was not the right thing to do (see e.g. Malan & Hunt 2014), as the idea of nation-building was forgotten but should have been done at the same time. South Sudan has been described only as “a geographical expression”, while what binds the South Sudanese together was their struggle for freedom (Jok 2011). However, Schomerus and Allen (2010, 7) note that state-building in South Sudan before independence was in competition with the need to control violence, but it can only be suppressed through strong and accountable state structures that do not exist. The situation should be addressed, and that is what the UN and UNSC have done.

If humanitarian intervention is understood to rebuild weak states, then there is a new perspective for evaluating the relations between solidarism and pluralism: it means that humanitarian intervention and sovereign statehood are to be complementary rather than conflicting (de Almeida 2003, 159–161). Piiparinen (2012, 423) notes how sovereignty-building is however an interventionist paradigm which relates the protection of human rights trying to homogenize sovereignties to satisfy e.g. human rights criteria but also trying to consider pluralisation and cultural sensitivity. These two aspects, as Piiparinen notes, can be viewed as self-contradictory or hypocritical. Or it could be interpreted in such a way that pluralism and solidarism exist at the same. De Almeida (ibid., 161) argues that international organisations – the UN, OSCE and the EU – consider humanitarian intervention and state-building as complementary practices seeking the same political goal. This kind of idea reflects the principle of R2P and a different reading of humanitarian intervention.

In “The Global Covenant: Human Conduct in a World of States”, Robert Jackson (2000, 380) argues that sovereign rights coexist with human rights, and if they are in conflict there is no principled way to decide which takes priority over the other. Jackson (ibid.) doubts whether international society should intervene in a country where there are grave human

rights violations but no threat to peace and security. Security problems are conceptualised in a different way, and what are considered as security problems, global wrongs are not necessarily considered as security problems (see also Dunne & Wheeler 2004).

Jackson (2000, 191; 249) gives his view about the nature of international society by saying how different views of humanitarian intervention do not necessarily assume a division between those who care about human rights and those who are indifferent to human rights violations. The states have the responsibility, great powers especially, to pursue international justice but they do not have to pursue that responsibility all the time, “the unity of great powers” is more important than protecting minority rights in any country. They cannot sacrifice these fundamental values, order and stability, international peace and security if they have to choose between order and justice (ibid., 291). Non-intervention and order<sup>6</sup> are more important than intervention for human rights and justice and as such, this could be expressed in the way in which values come first; as such, there is normative pluralism or norm contestation (see also Welsh 2010; 2013).

Normative pluralism is for Jackson (2000, 181) “the most articulate institutional arrangement”. The value problem is resolved according to situational ethics. This means that state leaders must make responsible choices in confining circumstances. As Jackson (ibid., 21–22) states, “Responsible choices are not to be confused with perfect choices. [...] They can only be expected to be justified. Responsible choices are the best choices in the circumstances or at least the most defensible choices.” However, for Jackson, this is not to be confused with moral relativism but it is “the ethics of the best choice” given the circumstances, or the least-damaging choice since decisions are always made in concrete circumstances of time and place, they are provisional and can only be justified “for the time being” (ibid., 147–148; see also Reus-Smit 2002, 497).

Both Wheeler (2000) and Jackson (2000) have chosen the one over the other, and as Bain (2014, 166) says “distorting the full moral claim of both”. International society has not been as tolerant as pluralist think, and not as unified as solidarist wish. Bain concludes (2014, 166–167) that there is no tension: “rather there is a single order conducted with reference to these two”.

#### 2.1.4.1 *The principles of consensus and consent*

Solidarism relates to the principle of consensus instead of consent (see Shapcott 2000, 157). Consensus has been developed as one of the core aspects of R2P. As the Secretary-General states in his report, this consensus includes “the need to prioritise prevention, to utilise a full range of diplomatic, political and humanitarian measures, to consider military force only as the last resort and to ensure that implementation of the responsibility to protect is in accordance with the Charter and other established principles of international law”

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<sup>6</sup> See also Vincent (1974), *Non-intervention and international order*. Princeton: PUP.; Bull (ed.) (1984a), *Intervention in World Politics*. Oxford: Clarendon Press.



(UNSG 2015, para 6). The SG continues, when evaluating the 10 years of R2P, that this time demonstrates how national arguments do not replace universal obligations to protect human rights. Mass atrocity prevention is both a national and international responsibility (ibid., para 7). The 2005 World Summit outcome stated that, in this respect, the status quo was unacceptable (ibid., para 14, 6/20; cf. Hehir 2015). To succeed, R2P must become a part of political frameworks in a way that states take victims of mass atrocities as their “national interest” (Brown 2013, 442). This is the idea in the solidarist conception of international society, and the discourse of putting people first (see also Chandler 2001). Kofi Annan (1999, 2) has argued that “national interest” should be understood in such a way that the pursuit of common goals and values should be possible – meaning the collective interest is the national interest and implying ethical skills.

The principle of consensus means that international society can act against the will of a state when there is a majority for that act in e.g. grave human rights violations, mass atrocities. However, to achieve consensus on substantive normative issues (also Bull 1966) is difficult and it is also difficult for international society to act in a concerted way. The principle of consensus differs from the principle of consent in which international law is upheld only by states willing to do so; international law requires the consent of those affected by it (Shapcott 2000, 157–158; Holsti 2004).

The consensus interpretation of international law suggests that there could be something like “the will of the international community” which could surpass the sovereignty of states (Shapcott 2000, 157–158; see also Bull 1995, 142–143). “The will of the international community” means an overwhelming majority of states (Bull 1995, 150), and Bull (ibid., 151) continues that order could be strengthened with such a consensus (overwhelming majority of states), but order is not served if such a consensus is pretended should some group claim to represent that consensus and act accordingly. The UNSC ought to be able to build consensus around R2P (see Einsiedel & Bosetti 2016, 373–378) exactly for this reason, but not to claim to represent a consensus if there is not such a thing (cf. Libya case in 2011).

These kinds of situations have emerged when a state is unable or unwilling to protect its citizens from mass atrocities. As Holsti (2004, 168–67) explains, the general rule to follow is that resolutions or treaties of an international organisation that pass and ratify by a significant majority create obligations for all except those states that explicitly abstain. The 1998 Treaty of Rome that created the ICC has been ratified by the majority of states in the world, but e.g. the US has not ratified it – so US military personnel cannot be tried by the Court in cases of crimes against humanity.

In the positivist tradition, treaties, customs, the standard practices of states, that are recognised by all states form the sources of law – reflecting the norm of consent. The Kellogg-Briand Pact (The General Treaty for Renunciation of War as an Instrument of National Policy, 1928) started multilateral references to *what states should do*, and it has turned to various pacts, charters, covenants, protocols which could be called “codes of

ethics” (Dorothy Jones, cited in Holsti 2004, 168), while others have called it “soft law”. These cover various fields such as human rights, the environment, health standards, and others (Holsti 2004, 167–168).

Holsti asks what is their status; do they require compliance even without the consent of states? However, the principle of consensus does not substitute the principle of consent, but the fact that “it does create a presumptive norm” could be Holsti’s own answer to this question. However, the growing body of soft law shows priorities of our time: the protection and advancement of human rights, social justice, the non-use of force, gender, and other forms of equality issues (Holsti 2004, 168–169). Schmidt (2018, 106–112) is referring to the *jus cogens* concept and how some international norms bind all members of international society regardless of their consent. Pre-emptory norms, such as prohibition of genocide, are so essential to international moral order that all states have an interest in upholding them. The *jus cogens* rules are related to human dignity and individual rights, and at the UNSC, these translate into solidarist practices. Thus, the UNSC R2P resolutions “do give meaning to what might be included in *jus cogens*” (ibid., 117). *Jus cogens* limits the UNSC’s function by imposing normative limits in terms of state behaviour and put obligations upon the UNSC to adopt resolutions which promote human rights and humanitarian norms (Schmidt 2018, 112).

Some have argued that the pluralist-soliarist discussion mainly concerns the concept of consent. The state should always give its consent before other states or the international community interferes in its internal matters. Pluralists think there should always be consent; solidarists think this is restricted for certain reasons: there could be exceptions when mass atrocities are happening. Solidarism is more connected to consensus than consent (Shapcott 2000). This means that international society can make decisions without the consent of the state – e.g. the UNSC authorised an operation against the will of Libya in 2011. But what is needed is the consensus of the international community, from other states, and reaching this consensus is not easy, as previously mentioned (Bellamy 2003, 5). However, as Chesterman (2011, 280) notes, from a legal point of view, the question of consent is not important, as the Libya operation was authorised under Chapter VII<sup>7</sup> of the UN Charter. Thus, resolution 1973(2011) was not a landmark resolution in a legal sense, but rather in a political sense, since there is now a consensus that resolution 1973 (2011) is as, Breakey (2002, 17) notes, “for better or worse”, an R2P resolution.<sup>8</sup>

Human practices are intersubjectively constituted and, according to this logic, they are discursively constructed. Since they are discursively constructed, it is possible to reach consensus according to which it is possible to legitimate norms and practices. The main

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<sup>7</sup> See also Security Council Report (2008a), Security Council Action under Chapter VII: Myth and Realities. June 23. Special Series Report. Resolution 1973 was adopted by a vote of 10 favour, none against with 5 abstained (Brazil, China, Germany, India and Russian Federation).

<sup>8</sup> For the Libya case discussion, see e.g. Ethics & International Affairs; also Ralph and Gifkins 2017; Brocheimer, Stuenkel and Tourinho 2016; see also Adler, Nissen and Pouliot 2011.



argument in discourse ethics is that moral and political practices are legitimate only when there is a consensus about them (see Shapcott 2000; Linklater 2004; Schaefer 2010).

#### 2.1.4.2 *Order and justice*

It can be argued that norms, rules and institutions of international society is leaning towards a more solidarist international society with R2P reflecting the idea of sovereignty as a responsibility, people-centered approach in general, human rights and using force to collective ends. From this perspective, globalisation has made the Westphalian order of great power politics, balance of power and international law with an emphasis on state sovereignty and the rules of non-intervention look old-fashioned. Justice was a part in debates of order (Hurrell 2014, 153; see also Bull 1971). Thus a notion of security moved away from the traditional understanding of national or state security as practices of human security developed. Justice and order were increasingly interlinked, but justice was becoming more prominent. The academic literature has also reflected these kinds of developments; international society could thus be defined in solidarist terms (Hurrell 2014, 149–150; see also Brown 2015). However, as Hurrell (2014, 153–155) points out, several issues have pushed international order back in the Westphalian direction. These issues could be seen as security, rising nationalism, foreign policy activities of the US, Russia or China, and nuclear weapons discussion – many of which were thought to be over in the sense that they would be discussed differently (see also Welsh 2013).

In relation to global governance, Francois Debrix (2005, 41) considers that the UN has become “a voice of global sanity” and has reflected an unwillingness to accept American global ambitions. Debrix is referring to the early 2000s, but this evaluation is also valid at the time of President Trump but perhaps in a different way. The UN was critical of how President George W. Bush decided almost unilaterally what governance ought to look like: getting rid of terrorist regimes and imposing of democratic governance. The US resigned its membership in the Human Rights Council in June 2018 as it was mentioned to be “hypocritical and self-serving organisation”, showing “unending hostility towards Israel” which was also interpreted to be a rejection of multilateralism (BBC News 2018). In his speech at the UNGA in September 2018, President Trump rejected global governance and reiterated his criticism of the UN and the ICC, which has no jurisdiction and authority, according to President Trump (UN News 2018).

Bull’s contributions to global governance concerns questions of order and justice, which are also the main concerns of global governance. The UN is one of the main actors in global governance, it shows an institution of great power management has a moral duty to maintain order, peace and security in international society. Great powers, as defined in this study, are all the permanent members of the UNSC and thus the UNSC “as a form of great power management” is very important to global governance (Makinda 2002, 367). The Charter gives the UNSC governance function, which means security and order to the

international community. This governance function has changed over the years. Especially after the Cold War, this has meant dealing with intra-state conflict, mass atrocities, genocide, democratisation, and health and environmental issues (Bosco 2014, 546).

However, the justice-order dilemma can be only resolved when states promote and respect human rights. The Responsibility to Protect was meant to overcome this dichotomy by asking how to protect endangered people (Bellamy 2016a). Bull (1971, 273) established how demands for justice mean “the removal of privilege or discrimination, for equality in the distribution or in the application of rights as between the strong and the weak, the large and the small, the rich and the poor, the black and the white or the victors and the vanquished”. Justice could be defined as respect for human rights. It also relates to the terms morality and virtue, and perhaps just means what is the morally right thing to do (Bull 1995, 75–76).

Bull (1984, 11–18) takes up the concept of justice in his “Hagey Lectures”. He argues how the situation has changed from the idea that justice in international relations ought to only concern the rights and duties of states towards the idea that justice also concerns all individuals, in other words, the growth of human rights in international law. The concept of justice should consider the “emerging sense of the common good” so there will be more questions about distributive justice and fewer about reciprocal justice. However, the pursuit of distributive justice is not without difficulties. Distributing rights and benefits is difficult because there are competing principles. Bull concludes that justice in international relations must be reconciled with order, and this is sometimes successful. Further, it would be “foolish to expect that this can always be done” (Bull 1984, 17–18; see also Bull 1995, 74–94).

It has been estimated that some pluralist ideas can contribute to the solidarist agenda, while solidarist ideas may strengthen a pluralist commitment to diversity by considering the state as a defender of that diversity (Weinert 2011, 34); while solidarism can be advanced in a perfectly pluralist environment (see also Knudsen 2013; 2015; 2016; 2018a). If pluralism stresses diversity (see Jackson 2000), it must at least sometimes ease off its defence of the state in favour of prioritising the individual in certain circumstances, according to Weinert’s argument (Weinert 2011, 34). He continues that pluralists should accept human security and the role of individual security and its relationship to other security issues, and solidarists should accept the idea that human security is not at odds with state-based international society. This is exactly what R2P wishes to do (see Piiparinen 2012) by strengthening sovereignty, states, order, and justice at the same time.

Pluralists should also broaden their views of security threats (cf. Jackson 2000; Dunne & Wheeler 2004), which would be a logical consequence of a commitment to diversity. As such, and from this perspective, the pluralist argument of sovereignty and non-intervention might be unjustified. If different security threats are increasingly related, they need multilateral dealings. Human security also satisfies the pluralist criteria of diversity and can thus be interpreted to be both pluralist and solidarist (see Weinert 2011, 34–40).

Weinert (*ibid.*) continues on how an ethical concern with individual welfare affects policy discourse, thus strengthening state and international order (cf. Hehir 2015; Nasu 2012). Weinert (*ibid.*, 40) closes his arguments by stating that international society as a whole is to be considered both pluralist and solidarist.

R2P entails a turn towards a solidarist interpretation of international society. Changes in primary institutions can be noticed in contemporary international society, meaning solidarist changes take place within the reproduction of constitutive principles. Knudsen (2015, 6) refers how the reproducing practices e.g. of great power management, international law and sovereignty have become more collective and contribute to human justice. They are characteristic of the solidarist concept of international society in sovereignty as responsibility, human rights and justice. These changes affect the working of primary institutions.

R2P challenges state authority as a given (Orford 2011, 41; cf. Hehir 2015). If the authority of the state and international community rests on their capacity to protect, as argued, R2P challenges the formal commitment of sovereign equality, self-determination and non-intervention. Accordingly, R2P represents a shift in thinking about the lawfulness of the authority of the state. Orford (2011; see also Vincent 1986, 127) finds R2P to be one of the most important normative shifts in international relations since the UN was established in 1945. According to R2P, both state and international community get their authority from their capacities to provide effective protection (Orford 2011, 16). This complies with the discourse of putting people first (see Chandler 2001, 3). This is a very radical shift, indeed – as radical as it was to state that all states are equal. This last mentioned radical shift was realised in the UN Charter, as “equal rights and self-determination of peoples” (Article 1(2)). This clause is mentioned as a legitimisation of the principle of decolonisation. In 1960, the General Assembly passed the Resolution 1514 “Declaration on the Granting of Independence to Colonial Countries and Peoples”, which interpreted the Charter provisions from the point of view of order and justice (Roberts 2003, 57; Lemay & Hébert 2009, 32). Territorial integrity as a norm has meant a frame for state-building, external state-building practices, but at the same time it has meant the importance of domestic politics (Lemay & Hébert 2009, 32–33) and “the moral idea that states everywhere belong to their populations” (cit. Jackson & Zacher 1997, 21 in Lemay & Hébert 2009, 33).

To say that international society is either solidarist or pluralist – the stance Wheeler and Jackson have taken – would mean that the complexity of international relations could be reduced to one or the other. As Weinert (2011, 38–40) notes, solidarism is about more than human rights, and pluralism goes beyond main values. The point is to see the variety of concepts to be able to analyse how international society develops. If the aim of the ES is to discuss the institutions and norms of international society as well as to notice emerging ones, then we need to use pluralist and solidarist concepts to explain and understand such developments. An international society without rules and norms against slavery and human trafficking, other human rights instruments or international organisations would be not

the same as one that has such institutions and norms. “Pluralist commitments may impede solidarism as well as solidarist commitments may impede pluralism”, and as Weinert argues (*ibid.*, 40), it is precisely this interplay and nuance that we should observe. This is also what is suggested to do in this study.

## 2.2 R2P and institutions of international society

### 2.2.1 Institutions of international society – institutions as practices

R2P is discussed in terms of the ES. Perhaps R2P is the “embodiment” of pluralism and solidarism existing at the same time in international society. R2P stresses the responsibility of states, firstly, and secondly, the responsibility of international society, while emphasising that these responsibilities are complementary. This can clearly be noticed i.e. in the World Summit Document of 2005 (UNGA 2005): international law is norm-based, referring to human rights, democracy, good governance, and the rule of law. It is moving away from a state-based system, and while it respects the sovereignty of states, it promotes peace, security and human rights as was interpreted by Navi Pillay (2014), the former UN High Commissioner for Human Rights.

Institutions explain the working of international society (see Bull 1966, 48). These institutions of international society, according to Bull, are the balance of power, international law, diplomacy, great powers, and war. Further, “these are a set of habits and practices shaped towards the realisation of common goals” (*ibid.*). These institutions reflect the cooperation between states, showing their political functions and means to sustain that cooperation. As Bull continues, these institutions “symbolize the existence of an international society that is more than the sum of its members” (Bull 1995, 71; see also Navari 2018, 53–55).

There are different ways to understand these institutions and what is in fact considered an institution (see i.e. Holsti 2004; Buzan 2014; Schouenborg 2014; Knudsen 2013; 2016; 2018; Spandler 2015). International society is like a social fact, it cannot be seen, but its effects are real (Dunne 2001, 89; see Buzan 2014). For ES thinking, institutions are important for several reasons. They are e.g. the embodiment of international society, and how the ES sees institutions “separates it from the mainstream, rationalist, neoliberal institutionalist study of international regimes” (Buzan 2004, 161; see also Knudsen 2013; Schouenborg 2014; Wendt & Duvall 1989, 60–63; Keohane 1988).

Buzan (2004; 2014) uses institutions as a method to present the social aspects of international order (see Navari 2016, 121). According to Buzan (2004, 167–176) the concept of primary institutions refers to practices that have evolved and which constitute actors. These practices are to be shared among members of international society and considered as legitimate behaviour, it is about shared identity. Institutions, according to Buzan (2004, 181), are not permanent or fixed, although they are durable (see also Navari 2018).

Holsti (2004, 21–22) gives three criteria for institution. They are firstly, “patterned practices, or practices that are typical and recurrent”; secondly, they are based “on coherent sets of ideas and/or beliefs that describe the needs for the common practices and point how certain social goals can be achieved through them”; and thirdly, they “reflect norms, and they include rules and etiquette”. Moreover, institutions define how actors should behave and act, when they are allowed to act and what they are allowed to do.

## 2.2.2 Primary and secondary institutions

### 2.2.2.1 *Primary institutions*

These institutions can be defined in ontological terms as Knudsen (2016, 103; see also 2018) has stated:

institutions are intersubjective understandings laid down in shared principles and practices that are constitutive of an international order and international society. The relationship between state actors and primary institutions is mutually constitutive: primary institutions are produced and reproduced by states over time; states participate in social and orderly interaction as sovereign actors with rights and duties on the basis of primary institutions.

Knudsen takes this as a logic of structuration (Wendt & Duvall 1989), and Buzan (2014, 17) agrees.

Primary institutions of international society were developed before international organisations such as the League of Nations and the UN. Holsti (2004) studies different institutions to see what kinds of changes they have undergone in the past 300 years. Each institution has its own profile, diplomacy developed to its institutional status in the 18<sup>th</sup> century, while others were only “in a Hobbesian state of nature”. In his listing of institutions, Holsti (2004, 24–27; see also Navari 2018) makes a differentiation between foundational and procedural institutions.<sup>9</sup> He (2004, 25) argues the without these institutions, the political space would have been organised differently and would have entailed different behaviour (see also Weinert 2011). These institutions mean a privileged status for some actors, and they also define their mutual constitutive principles and norms. Holsti defines these institutions to include sovereignty, territoriality and the fundamental rules of international law (Holsti 2004, 25).

Holsti (2004, 25) defines procedural institutions as composed of those “repetitive practices, ideas and norms that underlie and regulate interactions and transactions between the separate actors”. These procedural institutions refer to issues of how the actors

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<sup>9</sup> There are also primary, foundational, fundamental, master, or basic institutions, meaning the same thing. Different researchers use the different concepts, and they could be used synonymously. Holsti (2004) has defined procedural institutions, note also secondary institutions which are international organizations and regimes.

“behave towards one another in the conduct of both conflict and normal intercourse”. Holsti (ibid., 26) lists procedural institutions to be diplomacy, trade, colonialism and war and makes a claim that if a procedural institutions disappeared, the workings of primary institutions would not be affected because, they are “only” repetitive and regulative but have no reproductive or transformative characteristics. In this study, R2P is defined as a procedural institution and will be discussed more in sub-chapter 2.3.

Bull (1995, xviii) considered that the UN and other international organisations are to be better understood regarding their contribution to the working of other basic institutions than in terms of their official aims. Buzan (2004) has argued that international organisations like the UN are *nested in* fundamental institutions and these fundamental institutions are constitutive of international organisations, (sovereignty affects how the UN and the UNSC can work).

Primary institutions, for Knudsen (2013; 2015; 2016; 2018, 30–31), as mentioned previously, are constitutive principle(s) that make meaningful interaction possible and practices by which these constitutive principles are reproduced at the same time structuring states’ actions and interactions. *Continuity* means the reproduction of constitutive principles, and *change* means changes in the practices that reproduce the constitutive principles or sometimes even in the constitutive principles<sup>10</sup> themselves.

Primary institutions and secondary institutions, meaning international organisations, are said to be mutually constitutive (Knudsen 2015; 2018). This means that sovereignty, international law, war, human rights, and great power management make the United Nations possible, while, at the same time, the United Nations and Security Council reproduce the constitutive principles of these institutions, or they might even change the practices of these institutions (see also Schmidt 2018).

International society cannot exist without sovereignty, diplomacy, international law, the balance of power, and great power management – as they have a long history, they have evolved rather than been designed (see Buzan 2004; Holsti 2004), while secondary institutions such as the UN have been consciously designed (see e.g. Spandler 2015). International society can do without colonialism, slavery or war, but it cannot do without the institutions mentioned earlier. Discussions about how the primary institutions change concern both changes in the workings of primary institutions and changes in international society itself (Knudsen 2016, 104; 2018). This can be noticed when considering R2P.

Change is a process, not an event. Holsti’s approach to change and development in international institutions establishes Bull’s pluralist model in a new way, since Bull did not describe how institutions arise and disappear (Buzan 2004, 173).

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10 About the Knudsen model, see Navari 2018, 61–62.



#### 2.2.2.1.1 *Different criteria for institutions*

To identify international institutions, Holsti (2004, 25) made use of specific criteria. Different authors have used different criteria to choose and discuss institutions of international society (see Buzan 2004, 174; 187). Bull avoided this question, he did not explain why he chose those he did choose, and why excluded others. According to Holsti's criteria (Holsti 2004, 25), two of Bull's choices – balance of power and great powers – do not meet his own criteria. For example, Holsti mentioned that “great power” refers to a status, not an institution. This special status comes from the times of the Congress of Châtillon and Treaty of Chaumont (1814) and developed further in the League of Nations Covenant and the United Nations Charter. According to Holsti (2004, 25–26), here is “the idea of the great power”, but it does not meet his criteria of patterned practices. But since there are different opinions of this, there are different definitions of institutions.

Holsti (2004) discusses how new institutions arise (e.g. trade) and how some disappear (e.g. colonialism). Knudsen (2013; 2016; 2018a) for his part discusses humanitarian intervention, international criminal jurisdiction and international trusteeship, which he defines as new primary institutions belonging to a more solidarist international society showing how solidarist change is possible in pluralist society.

For Buzan (2004, 183–184), humanitarian intervention is a derivative of the principle of equality of people related to the process of decolonisation. Equality of people, for Buzan, is classified as a master institution. He is calling human rights a cosmopolitan institution, but human rights could also be understood as a shared value in an interstate society. Colonialism was a primary derivative institution up until 1945, based on the principle of inequality of peoples (Buzan 2004, 183; Buzan 2014, 153–156). This situation changed with the UN Charter establishing the idea of sovereign equality.

In this study, human rights is argued to be a primary institution, the norm of equality of people its constitutive principle and a set of regulative and normative practices (human rights practices) by which this constitutive principle is reproduced while structuring the actions and interactions of states, as Knudsen (2013; 2015; 2016; 2018; see also Buzan 2004, 179) argues. This equality of people is embedded in the UN Charter (1945) as in the Universal Declaration of Human Rights (1948). Human rights, and sovereignty and great power management are the basic principles of R2P as well as being the primary institutions for international society.

How do different institutions fit together, what kind of international society do they reflect? Sovereignty, territoriality, diplomacy, and balance of power fit well together, perhaps they support each other. Human rights and sovereignty and non-intervention, however, contradict one another, as noticed in the pluralist and solidarist discourses on international society. Colonialism contradicted sovereignty by building a society of unequals (see Holsti 2004; also Buzan 2004; 2014).

However, human rights and sovereignty could also be interpreted as creating equals, so sovereignty and human rights could be said to fit well together. Sovereignty as a

responsibility suggests that human rights and sovereignty fit together, and non-intervention is secondary if human rights are violated. By definition, R2P means sovereignty and human rights fit together, and great powers are in one way or another supportive of this: changes in their practices and/or a consensus that human rights are most important. The growing humanitarian concerns at the UNSC can be said to indicate this. Solidarist change is taking place in a pluralist international society. The UNSC has a vital role in shaping and defining international society's normative structure (Schmidt 2018; Knudsen 2018a).

R2P's function is to build up three sovereignties<sup>11</sup> (Piiparinen 2012), and as Reus-Smit (2001, 520; 537) argues, "sovereignty and human rights should be seen as two normative elements of the discourse about legitimate statehood and rightful state action". Accordingly, human rights defines the moral purpose of the modern state, which is the idea in R2P.

Holsti (2004, 54) states how the norms of self-determination have created new states after 1945 and de-legitimised other forms of authority. This kind of state is understood to be a normal way to organise political entities, but the statehood is not always consistent with norms. South Sudan got its independence after a referendum in February 2011, as was required by the Comprehensive Peace Agreement (CPA). Mr. Deng Alor Kuol, Minister of Regional Cooperation of the Government of Southern Sudan, stated at the UNSC meeting how this referendum implied maturity and commitment to exercise their right to self-determination (S/PV.6478). He further promised that South Sudan would "apply for membership in the relevant regional and international organizations [...] pay particular attention to international human rights instruments and international humanitarian law", thus implying its statehood. Mr. Deng Alor Kuol also expressed South Sudan's willingness to reflect international human rights norms "in our national structures and Government institutions" (ibid.). South Sudan is a weak state, but as Holsti (2004, 55–56) indicates, weakness is not necessarily a permanent state but a variable. Legitimacy is a critical dimension in statehood, state strength and state-building.

The institutional approach to state-building means concentrating on the security machinery and institutions of the state and their efficiency, since the so-called legitimacy approach is more concentrated on their legitimacy. Thus, state-building has an aim. Lemay & Hébert (2009, 24–25) refer to Holsti (1996) and Buzan (1991), stating the very idea of a state rests in the realm of ideas. This approach is composed of three elements: "the physical base of the state" (sovereignty, territory), "the institutional expressions of the state" (rules of the game and scope of institutions) and "the idea of the state" (implicit social contract and ideological consensus) (Holsti 1996, 98; Buzan 1991, 64 cit. Lemay-Hébert 2009, 24). The physical base of the state and institutional base belong to the institutional approach, while the idea of the state belongs to the legitimacy approach. The legitimacy approach also relates to the nation-building aspect, but they should be seen as inseparable components of the same project (Jok 2011). In the contemporary state-building processes, emphasis

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11 Piiparinen (2012) argues that R2P refers to three aspects of sovereignty, namely popular, spontaneous and indivisible sovereignty.



is placed on international norms which imply legitimacy, while international legitimacy could be seen as intertwining with national legitimacy (Lemay & Hébert 2009, 32; see also Roberts 2013). This in turn relates to the concept of “local ownership” in nation-building and even to the “local turn” in studies on state-building and peace-building, in other words, how local actors can contribute to state-building and peace-building (see Lee & Özerdem 2015). Conversely, local ownership is a difficult concept to define, since it is based on a conceptual ambiguity – “local” and “ownership”. The UN supports the concept and has adopted it for its own purposes, as von Billerbeck (2009, cit. in Mackenzie & Smith 2015, 58–59) suggests. National and local could be seen to mean the same, however, this approach could face difficulties e.g. in countries like South Sudan, where local and national ownership are contradictory (ibid.; see also UN 2008). Whom to help, whom to support? Does state-building secure the state or its people (Gordon 2014)?

Jok (2011, 2; 12) notes how the South Sudanese political leadership noticed the challenges of nation-building and promised to deliver state services to its people, deal with corruption and insecurity and establish a stable, unified and working country. However, it has been acknowledged that South Sudan, a country that has over 60 cultural and linguistic groups, has a long way to go towards nationhood. Nation-building means establishing shared customs to prevent a further escalation of the conflict and not only institutional state-building. It is the people who make the nation. The UN (2008, 39), the UN Department of Peacekeeping Operations has remarked on how it is important to make sure that the term “national ownership” does not hide or replace a real understanding of what people need and want.

Holsti (2004, 56–61) defines legitimacy as an idea which measures citizens’ attitudes towards the state. Citizens can withhold or withdraw their consent. Different opposition groups do not give legitimacy to government, they want to change or rearrange it and thus their authority is questioned. A state can be a kleptocracy, whereby a few state authorities use the state machinery for their own profit in many ways instead of providing security and protection for citizens. In such a case, this kind of government becomes a threat to its people or some of its people. Alex de Waal (2014) has called South Sudan a kleptocracy. However, as has been argued, according to R2P, a state needs the capacity to provide protection. South Sudan needs help in capacity-building. Mr. Deng, Minister of Regional Cooperation for the Government of Southern Sudan, has welcomed the support and help of the international community (S.PV.6478). However, cooperation and assistance are different from imposing decision and solutions.

The principle of sovereignty gives states authority within their territorial borders, and there is no higher authority. However, human rights norms limit “how states can treat their peoples”. Sovereignty is thus compromised, but they are seen as two separate regimes (Reus-Smit 2001, 519). This is considered a fundamental tension. Reus-Smit (2001, 519) is referring to Bull, who saw how the principles that support international order – i.e. the mutual recognition of sovereignty – and the demands of human justice articulated in terms

of human rights norms can cause tension. Buzan (2004, 179) refers to how human rights “might count as constitutive [as they can imply] what practices are legitimised (or not) by sovereignty” and how key actors are defined. Different primary institutions are mutually dependent and also intertwined, and if changes occur in one primary institution, this necessarily impacts the others (see Knudsen 2013, 26; see also 2018).

### 2.2.2.2 *Secondary institutions*

Primary institutions are not the only institutions of international society. Barry Buzan (see 2004; 2014) first distinguished between primary and secondary institutions, using these terms to differentiate between types of secondary institutions such as international organisations like the UN or ICC and other regimes such as the human rights regime (see Keohane 1988; Wendt & Duvall 1989; Simmons & Martin 2002).

#### 2.2.2.2.1 *The United Nations and the United Nations Security Council*

Some have argued that the UN was established in 1945 as a new post-war international order, as there was a new and the changed understanding of sovereignty and legitimate use of force (Spandler 2015, 611). The UN was created “not to take mankind to heaven but save it from hell” (Dag Hammarskjöld)<sup>12</sup> as the main provider for international peace and security, order and justice.

The UN has responded to challenges of war and armed conflicts in different ways. It has established practices of rule of law, negotiations, preventive diplomacy, peacekeeping (Jolly, Emmerij & Weiss 2009, 163). R2P has been counted as the fifth innovative idea in this struggle, and these five together constitute the sixth idea – namely human rights (ibid.; see also MacFarlane & Khong 2006). This all reflects the governance function established by the Charter, while the content of governance has differed over time (see Bosco 2014, 546–548).

Buzan’s conceptualisation of primary and secondary institutions has been significant. He first made this division in his work “From International to World Society” (2004). He sees secondary institutions as a quite new phenomenon, dating back to the late 19<sup>th</sup> century (Buzan 2014, 17; see also Navari 2016, 122; 2018). These secondary institutions or international organisations exist to operationalise the primary ones (Buzan 2004). He later continues (2014, 30) that “secondary institutions are reflective and supportive of primary ones, and their possibilities are constrained by the broader framing of primary institutions within which they necessarily operate.”

Knudsen (2018a) has specifically asked how secondary institutions can contribute to the evolution of solidarist practices or institutions. He states as an answer to this question (2013, 19; 2018a, 176) how the UN has made possible “the use of force for the common

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<sup>12</sup> Written on the wall of the UN Headquarters in New York.

good and the revival of humanitarian intervention<sup>13</sup>, international criminal jurisdiction and international trusteeship”. According to Wendt and Duval (1989), international organisations have constitutive, constraining, organising and reproduction effects. Thus, the UN not only establishes but also reproduce readings of primary institutions. These processes may follow each other, and changes may be brought to primary institutions (see also Navari 2016).

Knudsen (2016, 104–105; see also 2018) has developed his theory of change: it gives a possibility to specify institutional continuity and change and their relationship (cf. Bull): “fundamental institutional change can be thought of as changes in the reproducing practices and in rare cases, in the constitutive principles themselves”. War could be given as an example of the latter case. This idea can be seen as supporting Buzan’s view as a more advanced and complementary version of it.

It is argued in this study that R2P cannot be understood without the UN and UNSC. According to Knudsen (2015, 2), “the UN and the International Criminal Court have the capacity to shape and even change the constitutive principles and reproducing practices of fundamental institutions”. These institutions could be sovereignty and great power management and human rights, and affect the nature of international society. Knudsen argues further (ibid.) how the changes that have occurred are of a solidarist nature since they have provided principles which are constitutive of a solidarist international society. The UN’s role can be seen in this institutional change process when primary institution is defined as a set of constitutive principles and a set of practices by which they may be reproduced (see Knudsen 2018a; 2016).

Spandler (2015) echoes Knudsen’s thinking (see Navari 2016; 2018). Spandler (2015, 607–609) criticised how Buzan (2004; 2014) left undeveloped both the questions about how these two institutions relate to each other as well as the question about institutional change and that Buzan gives three solutions for this problem. Buzan (in Spandler 2015, 607) states that secondary institutions can empirically reflect some primary institutions and thus a certain type of international society.

Spandler (ibid.) defines this as an individualistic understanding of international society when noticeable behaviour can be interpreted “as an empirical indicator of the existence of an international society”. According to this logic, he continues, “secondary institutions are situated in a more ‘material’ ontology”, which means that they are stronger than the “ideational” level of primary institutions. The main point of Spandler’s critique is that Buzan sees the primary institutions of international society – such as international law – as being constitutive of secondary institutions: it (international law) forms “the political foundation that is necessary before regimes can come into play” (Buzan 2004, 359). For Spandler (2015, 605), this terminology means two layers of international society and a hierarchy between them, and this causal influence should be understood as an empirical

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13 See also Rodongo (2016); Holsti (2004) about the history of humanitarian intervention and Dunne & Staunton (2016) about Cold War humanitarian interventions (2016); Knudsen 1999; Hubert 2010.

question. However, Spandler suggests instead an intersubjectivist reading of international society following Dunne and Reus-Smit and their ideas of constructivism.

According to constructivists like Dunne (2007a) and Reus-Smit (2001; 2002; 2009), international society could be understood as consisting of intersubjectively shared meanings coming from interaction but being independent of actors. This means, Spandler continues (2015, 605) as he is referring to Adler and Guzzini (*ibid.*, note 20), “that social structure is not reducible to individual properties or patterns of practice [...], because intersubjective meanings are constitutive both of actors and their interactions”. They define legitimate actors and practices.

Spandler’s (2015, 605) definition of practice refers to international actors’ interaction as it is guided how the others expect you to behave and also how you ought to behave vis à vis others. In this definition of practice, there is a normative dimension (see also Navari 2011). This kind of intersubjectivist approach means the processes of institutionalisation of shared meanings in discourses are most important. These discourses constitute the practices in international society (Adler in Spandler 2015, 605). This suggests that if norms are not followed, this does not contradict these norms as long as this kind of behaviour is criticised (Spandler 2015, 606)<sup>14</sup>.

Norms are valid, although they are not followed all the time. As Björkdahl (2002, 13, 22) argues, states talk about how norms can be more important than how they act (cf. the concept of hypocrisy). As the South Sudan representative in the Security Council meetings said, “South Sudan will be not just the world’s newest state, but its newest democracy” (S/PV.6478). International norms do not determine any outcomes but create possibilities for proper behaviour. This could imply a willingness to make a norm stronger and, in that sense, it could be important for the norm in the long run. Because R2P has now become the orthodox way of speaking about mass atrocities and their prevention, and as R2P has been mainstreamed in the UN system (Bellamy 2013), it is not just pointless talk (see Gifkins 2016; 2016a; cf. Glanville 2016; Hehir 2016). Also, although R2P is now commonly used in UNSC resolutions, this has not always been the case<sup>15</sup>. There has been a reluctance to invoke R2P language due to various political sensitivities (see e.g. Bellamy 2013, 162–177).

Because R2P is a political concept, it is important to communicate the R2P commitment (Okyere & Porter 2015, 6). This means from the viewpoint of R2P that although it is challenged, it does not mean it is invalidated.

These differences have implications regarding the ability to account for institutional change. In individualistic approaches, change in institutions means a change in individuals’ attitudes. In the intersubjectivist approach, interpretation is different: institutions remain valid even if actors stop believing in their validity and deviate from them, such as in e.g. Turkey, China, the US and Russia since the 2010s. The individualistic

<sup>14</sup> About Spandler’s model, see Navari 2018, 62–65.

<sup>15</sup> All the UNSC resolutions refer to R2P between 2006–2015, see References to Responsibility to Protect (ICRP 2017), <http://www.responsibilitytoprotect.org/index.php/component/content/article/136-latest-news/5221-references-to-the-responsibility-to-protect-in-security-council-resolutions>

approach faces problems when contradictory expectations are formulated. When adopting an intersubjectivist approach, the focus is on the institutionalisation process of shared meanings in discourses, while these discourses constitute practices in international society (see Spandler 2015, 605–607). Change occurs “in response to dynamics in the mechanisms that link institutions to each other and institutional practice” (ibid., 607).

Spandler (ibid., 608) offers an alternative to constitutive-regulative distinctions and argues that secondary institutions are constitutive because actors understand that “their identity as a member of the international community is dependent on their acceptance of the rules”. Could this explain the “popularity” of R2P and the relatively short time it took for its acceptance?

International organisations are important because they can grant or deny recognition to a member of the international community. UN membership means that the international community has recognised a country as a member of the international community. Membership is a sign of the actor’s political relevance (membership in the Security Council) and existence (see Spandler 2015, 609–610). However, being recognised as a state and having UN membership are two different things. It is possible to be a sovereign state without being a UN Member State (such as Switzerland, who has been a Member State of the UN since only 2002), and it is also possible to be a UN Member State without being an independent state (such as India before its independence) (see Cerone 2011.)

Palestine is also an excellent example of this, it received its “Non-Member Observer State” status in the UN in 2012, 67<sup>th</sup> General Assembly, Plenary meetings 44<sup>th</sup>/45<sup>th</sup> by an overwhelming majority (138 in favour, 9 against with 41 abstentions). It now has its permanent Observer Mission of the State of Palestine (UNGA 2012). The 69<sup>th</sup> General Assembly, at its 102<sup>nd</sup> meeting, adopted a resolution (UNGA 2015) on raising the flags of non-member observer states at the United Nations<sup>16</sup> by a recorded vote of 119 in favour to 8 against, with 45 abstentions. In 2015, Palestine (Palestinian Authority) acceded to the Rome Statute which means it accepted ICC jurisdiction. Palestine does exist at the UN and in the international community (see also Cerone 2011).

Also, all new states, such as the Republic of South Sudan, usually apply for membership at the UN since it means being part of the international community and participating in its activities<sup>17</sup>. South Sudan’s admission was uncontroversial, as both the UNSC 1999 (2011) and UNGA (2011) resolutions were adopted by consensus. The President of the Security Council stated (S/PRST/2011/14):

The Council notes with great satisfaction the Republic of South Sudan’s solemn commitment to uphold the purposes and principles of the Charter of the United Nations and to fulfil all the obligations contained therein.

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16 “Decides that the flags of non-member observer States at the United Nations maintaining permanent observer missions at Headquarters shall be raised at Headquarters and United Nations offices following the flags of the States Members of the United Nations” (UNGA 2015).

17 See <http://www.un.org/en/sections/member-states/about-un-membership/index.html>.

We look forward to the Republic of South Sudan joining us as a Member of the United Nations and to working closely with its representatives.

South Sudan also applied for membership in other international organisations, regional ones, such as the African Union, the Nile Basin Initiative, IGAD, observer Status in the East African Community (see UNSG 2011c, para. 16), and the IMF and the World Bank (UNSG 2012b, para. 21).

Since 1945, the idea of the UN has been to strengthen states and their statehood. Related to this, as Holsti argues (2004, 49), is granting official recognition to new states “no matter what their internal condition”. Earlier, in the 18<sup>th</sup> and 19<sup>th</sup> centuries, this kind of recognition was given only when a state had shown that it had effective control over its territory, ability to meet treaty obligations and carry out international responsibilities. This new type of practice changed the standards for recognition and is “a reflection of the inherent moral quality of statehood” (ibid.) and of the norm of self-determination. The UN thus constitutes the moral state.

Also, under Article 6 of the Charter, “A member of the United Nations which has persistently violated the Principles contained in the present Charter may be expelled from the Organisation by the General Assembly upon recommendation of the Security Council”. Also, according to Article 5, “A Member of the United Nations against which preventive enforcement action has been taken by the Security Council may be suspended from the exercise of the rights and privileges of membership by the General Assembly upon recommendations of the Security Council. The exercise of these rights and privileges may be restored by the Security Council.” As Luck (2009, 16) notes, these practices could be used in R2P crimes, but as of yet, they have not been used.

Spandler (2015, 610) argues that primary institutions constitute actors, how such “actorness” is acquired and that the relations are between those actors. Secondary institutions constitute actors by providing different roles. Secondary institutions can empower them to engage in specific roles that would not be possible otherwise. This is clearly seen in the activities of the UN system, especially from the Security Council, and also from the General Assembly and Human Rights Council or UNESCO (see Finnemore 1993). Secondary institutions can define actors’ identities, interest and resources and make possible meaningful interaction: if a state was a member of the UN, it would be outside the cooperation the UN makes possible (Spandler 2015, 611).

Spandler (ibid., 612) argues that for primary institutions, institutionalisation means an “emergence of permanent patterns of intersubjective meanings through discursive practices” as has happened with R2P. For secondary institutions, institutionalisation means institution-building, international organisations, regimes, treaties, networks that are consciously created – such as the ICISS defining a new principle, R2P. This is also a discursive practice.

Primary and secondary institutions can be conflicting, an example could be human rights and sovereignty (see also Bull 1966; Vincent 1986; Wheeler 2000; Spandler



2015; Knudsen 2013; 2015; 2016; 2018a). The human rights concept can be considered a primary institution, and this has raised questions about its relation to the other primary institution, most likely to sovereignty. It is also in contradiction with established rules and procedures of the collective security of the UN. However, R2P has, for its part, tried to solve this inconsistency by defining sovereignty as a responsibility. This also reflects the incompatibilities of human security and collective security (Spandler 2015, 620; also Nasu 2013).

Contradictions such as the one between human rights and sovereignty could mean questioning the legitimacy of certain institutions, the reform or transformation of existent institutions, and the creation of new ones. As in the case mentioned, sovereignty has come to be seen to mean the ability to protect the population, sovereignty as a responsibility, and thus the relationship between human rights and sovereignty can be perceived in a different way. These inconsistencies have been present in the work of the UNSC (see Spandler 2015, 620–621). This could be said to reflect how international society is both time pluralist and solidarist (Knudsen 2018; 2018a). Therefore, inconsistencies between institutions can also mean a possibility for change; they can follow new ways of thinking, and R2P could be an example of this (Spandler 2015, 621).

War was seen as a strong and important practice of pluralist international societies (see Buzan 2014, 104) but the UN Charter changed this in Article 2(4)<sup>18</sup>. Articles 39–42 in the UN Charter meant a profound change in the constitutive principle of war an institution (see Buzan 2014, 104; also Weller 2017, Ch. III). This means that legitimate use of force refers to self-defence against armed attack and collective maintenance of peace and security by the UN. This process began in the Covenant of the League of Nations, which restricted the use of force (see also Holsti 2004).

There is a clear change of ideas about war. War is seen “as a crime, a disease, a tragedy, a great mistake, or an unfortunate necessity” (cf. earlier “a perennial practice”) (Holsti 2004, 167). Norms and practices do not always fit together, but these gaps do not make the norms vanish, for as long as acts of perpetrators raise questions, as long as the norms are not obsolete, even though they are violated (see Holsti 2004, 167; Spandler 2015).

Humanitarian intervention is not a new principle or practice, but these changes have meant its revival<sup>19</sup>, and R2P’s pillar III practice – intervention for human protection purposes – has made state aggression a crime (i.e. sovereignty as responsibility) (see Knudsen 2013, 24; 2018a). R2P also reads the practice of humanitarian intervention in a different way, meaning the use of force for the collective good, and thus it does not broaden the scope of using force.

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<sup>18</sup> “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations”.

<sup>19</sup> See e.g. Knudsen 1999; Abiew 1999; ICISS 2001; Holfgrete & Keohane 2003; Finnemore 2008; Scheffer 1992.



Wars and armed conflicts are by no means over, while most wars are civil wars, no longer interstate wars (Allansson et al. 2017). Contemporary wars are fights over e.g. control of economic resources, profitable trade in drugs, small arms, and other prohibited supplies. Mary Kaldor (2007; 2013) speaks in this connection of new wars (see also Melander et al. 2009); they could also be called organised crime, in which the criminals seldom have knowledge of the laws of war. Holsti (2004, 279–289) speaks of the de-institutionalising of war, stating that the constitutive principles and norms of war were to distinguish between different actors, combatants and civilians, between combatants and neutrals, government and military, war and peace. This also meant norms of human behaviour in war. While the case is no longer the same, regulations on the use of force have grown substantially and, at the same, violations of the norms and rules of war have also increased.

The distinction between combatants and civilians is not respected (see e.g. Slim 2007). Wars and conflicts in e.g. Sudan, Sri Lanka, Myanmar, Democratic Republic of Congo, Libya, Yemen, Republic of Central Africa, Syria, South Sudan have, as their most specific feature, targeted civilian populations (Allansson et al. 2017; Holsti 2004, 283–289). People have to flee to other countries, while their legitimate governments cannot offer adequate protection to people, or the government itself is the perpetrator as is the case in e.g. South Sudan. Since World War II, more people have been killed by their own governments than by armed forces of other armies: Rummel (1995, 3) suggests that democracy could be “a general method of nonviolence”. However, even the norms of war are not respected fully, they are not violated all the time either, although there are inconsistencies between laws, norms and rules and behaviour (Holsti 2004, 289).

Also, the distinction between war and peace is unclear, and there are peace agreements which may not last long if at all (Holsti 2004, 287; Human Security Report 2012).<sup>20</sup> Moreover, the main reason for fighting is not always victory (Holsti 2004, 287; also Kaldor 2007; 2013). Peace is not always sought, as it is not as appealing when compared with advantages gained through military means. If the goal is not a plan for society, but rather economic gains achieved through violence, conflict prevention and conflict resolutions have become and will continue to be extremely difficult and challenging (see Woodward 2007). Most protection measures are planned for interstate conflict, and for this reason, R2P is important since it is trying to change principles and practices to tackle this issue.

If the nature of armed conflicts and wars has changed, so must the principles and practices that enable them to change. Neill Winn (2004) argues that wars have changed so much that since the end of the Cold War, the world has returned to a system of neo-mediaevalism (cf. Melander et al. 2000). Bull (1995, 245) defines neo-mediaevalism as “a system of overlapping authority and multiple loyalty” where the question is (Bull 1995, 255)

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20 However, reached peace agreements are better than no peace agreement at all, because even failed peace agreements can save lives. If the violence starts again, it may not be that killing than before as peace agreements include already some ideas and steps as to how to resolve the issues. (Human Security Report 2012, 178.) The South Sudan peace agreement ARCSS (2015) has been violated and not been implemented but has not been ignored either, but a new peace agreement (R-ARCSS) was signed in 2018.

whether “sovereignty or supremacy of the state over its territory and citizens is such that it makes that supremacy unreal and deprive the concept of sovereignty of its utility and viability.” Bull saw that there exists such a trend.

Perhaps the aim of R2P is to strengthen sovereignty for this reason (see Piiparinen 2012). As Bellamy suggests, “R2P’s vision is not one of a world where sovereign borders are easily transgressed by intervening armies but one in which strong and legitimate sovereigns protect their own populations from harm, with the support of others if necessary” (Bellamy 2015, 84). R2P aims to bring order and justice to international society.

New challenges in protection have been noticed at the UN. The UNSG in his report, “A vital and enduring commitment: implementing the responsibility to protect” (UNSG 2015), pays attention to these new challenges. The UNSG (*ibid.*, para. 45) states how atrocity crimes have been committed in many places, and there are a new conflict dynamics and different types of perpetrators in these conflicts. The international community is trying to manage the situation, noticing that non-state groups that form their part in atrocity crimes and acknowledging the role of technologies conflicts (cf. Holsti 2004, 290–291). However, “the scale, brutality and global impact of the acts committed by some non-state armed groups represent a powerful new threat to established international norms” (UNSG 2015, para. 45–46). The SG also outlines a strategy for answering these challenges. However, it should be remembered (Holsti 2004) that if most states follow established norms most of the time, then individual interpretation does not make them meaningless.

The use of force is the most controversial issue of R2P, since the use of force to prevent or respond atrocities has had mixed results (see e.g. Seybolt 2016). However, the purpose in R2P pillar III is to civilian protection, not regime change (cf. Libya), and a new reading of humanitarian intervention means state-building. The UNSG has stressed political solutions and political processes as in the Report of the High-Level Independent Panel on Peace Operations (HIPPO 2015). In turn, Chesterman (2011, 279) has argued that “humanitarian intervention has always been more popular in theory than in practice.” However, it is notably a great power practice, as any permanent member can affect the allowance or prohibition of the use of force by using its veto power.

The UN and the UN Charter has signified important changes in the working of international society and its primary institutions, as has been discussed. Pluralist and solidarist versions of international society have been present in international practice, as Bull (1966) has argued. There are overlapping conceptions and confusion regarding empirical and normative debates, meaning a continuing conversation about which norms are guiding norms of international society (Bellamy 2003, 8–9). In the UNSC, there could also be normative pluralism in the sense that there is no consensus in the Council about the order of relevant norms. There is a problem as to what is needed and what can be given, but it is not so much a question of the complexity of the situation as it may reflect the difficulties R2P has in generating “compliance pull” in international society (Bellamy 2010, 153–154).

This is also about different competence claims in the normative context R2P has created. Lisa-Marie Komp (2013, 352) estimates that R2P's greatest achievement is perhaps that it has shifted the balance between non-intervention and the protection of human rights. By placing atrocity crimes in the agenda of international peace and security, it has forced the UNSC to discuss R2P. How did this happen? R2P bridges humanitarian problems and international peace and security. The Security Council practice has increasingly included humanitarian crises under Chapter VII of the Charter. Still, according to Komp (2013, 341), it is difficult to state the motivation regarding being humanitarian for the existing practices and *really* R2P competent practices (see Ralph & Gifkins 2017).

R2P exists with other norms and principles; all other considerations strongly impact how things work in practice (contexts). Bellamy (2015, 72–73) argues that R2P has started to reshape international affairs: “States recognise that committing atrocities is incompatible with their responsibilities as sovereigns and that atrocities are a matter of international concern” (see also Orford 2011; Brown 2013). This has meant, accordingly, that the Security Council has been criticised for not to respond effectively to mass atrocities (e.g. Bellamy 2015, 73; Einsiedel & Bosetti 2016).

Pluralist and solidarist principles have meant the enforcement of individuals' rights and duties. Individuals have been subject to international law since the Hague and Geneva Conventions and Genocide Convention and Nuremberg and Tokyo Tribunals with later developments in human rights law. This process relates to the ICC and international society as represented by the UN and the Security Council (Knudsen 2016, 107; 2015; 2018; see also Robertson 1999; Bassiouni 2009). It can be noticed that prevention and protection of mass atrocities has become a field of practice in its own right and protection of its own field of practice (see Bellamy 2015; 2016).

#### 2.2.2.2 *The International Criminal Court*

Adoption of the 1998 Rome Statute of the International Criminal Court<sup>21</sup> (entry into force 2002) meant that individuals have rights and duties under humanitarian international law and that these will be imposed at the ICC (see Knudsen 2016)<sup>22</sup>. The ICC belongs to gradual normative changes in international relations after World War II (see Franceschet 2012; Ralph 2004; Bassiouni 2009). Sikkink (2011, 5) refers to the justice cascade when discussing how individual state officials, heads of state, are criminally accountable for their human rights violations. This means, according to Sikkink, that “there has been a shift in the *legitimacy of the norm* of individual criminal accountability for human rights violations and an increase in criminal prosecutions on behalf of that norm.” The constitutive principle

21 Advocacy of many NGOs was important under the negotiations period of the ICC statute. There is e.g. a Coalition for the International Criminal Court (CICC) (Glasius & Lettinga 2013, 156–159; Boesenecker & Vinjamuri 2014; Van Ness 2014).

22 There are 139 signatories to the Treaty, 123 parties: 33 are African states, 19 Asia-Pacific states, 18 Eastern European states, 28 Latin American and Caribbean states, 25 Western European and other states (ICC 2018).

for the ICC (international criminal prosecution) is that “impunity is not acceptable in international society” (see Knudsen 2018a, 191). Legal aspects are thus an integral part of R2P.

The ICC and R2P both try to prevent and stop mass atrocities but in different ways. R2P gives a normative framework especially through the UN, and the ICC tries to end impunity for the atrocity crimes of genocide, crimes against humanity, war crimes, and crimes of aggression (see Mills 2014, 1). There are two ways to justify international criminal trials. Firstly, some crimes, e.g. crimes against humanity, need a response from the international community, and secondly, international criminal trials are meant “to deter actors who would otherwise commit these crimes with impunity” (Mayerfeld 2006, 361). For Kofi Annan, establishment of the ICC meant (quoted in Ainley 2011, 409) “a great victory for justice and world order – a turn away from the rule of brute force, and towards the rule of law”. Ainley (2011, 409) states how the 20<sup>th</sup> century has seen “individualization, legalisation and criminalisation of responsibility in international relations” but sees this as a problematic issue. The responsibility for war crimes does not lie only with individual perpetrators but also the collective. Thus, both states and individuals should be held accountable for violations of international law (Lang 2007, 239).

There is also a discussion between law and politics related to the ICC. Crimes dealt with by the ICC – genocide, crimes against humanity, war crimes – are by definition political, thus its actions have political consequences. When the ICC gets involved in a conflict situation, it becomes part of the conflict process (see Schiff 2012; Struett 2012; Rodman 2012). Consequently, there should be ethical prudence to consider these consequences (Struett 2012, 91), and the importance of the ethical aspect of R2P becomes clear.

However, the ICC needs the support of states, the UNSC or other international organisations in its working (Struett 2012, 87). According to Ralph (2004, 243–244) the Rome Statute has had a revolutionary impact by allowing for international intervention when states are unable or unwilling to enforce international humanitarian law. This can be said to define “the standards of humanity”, but it also sets down states’ responsibility. The Rome Statute helps constitute the “world society” according to the ES by defining standards of humanity (Ralph 2005, 43). The UNSC could consider referring the South Sudan case to the ICC if the government or justice system is unable to address past human rights violations. Rotberg (2010, 8) has noted how the existence of the ICC has helped victims to get implicit recognition of what has happened in the way as truth and reconciliation commissions have done. In 2013, the South Sudan government established a “Committee for National Healing, Peace and Reconciliation” to address past atrocities. Victims could tell their stories, and perpetrators could confess, seek forgiveness and build “a national narrative of their troubled past” (see Deng & Deng 2014), and start a healing process (see also Deng & Willems 2016). These two processes – the ICC and truth commissions – could be complementary, not contradictory.

The ICC's competence is complementary, meaning it can only function if the domestic court is unable or unwilling to do so. The idea is to strengthen the state in taking care of its protection function, to strengthen the domestic criminal courts and to strengthen the rule of law (Sikkink 2011, 18). State sovereignty has weakened the ICC's ability to prosecute e.g. the government of South Sudan has said that it is completely capable of taking care of its own prosecutions (cf. AUCISS 2014, 17).

The ICC is an achievement as such, although it needs the support of states. The benefits of a Groatian solidarist society can be found from the Rome Statute, as it prefers state enforcement of universal laws. Ralph (2005, 37) argues that "justice at the level of the state is more effective in rebuilding strong communities than justice implemented at a cosmopolitan level of 'foreign' judges." The "Agreement on the Resolution of the Conflict in the Republic of Sudan" (ARCSS), signed by President Salva Kiir and opposition leader Riek Machar, called for the establishment of an independent Hybrid Court for South Sudan (HCSS) to investigate atrocities committed during the civil war in 2013–2015. Although the government of South Sudan has delayed its formation, in July 2017, the African Union and the Government of South Sudan issued a joint roadmap and Memorandum of Understanding for the establishment of this court. The Minister of Justice presented this to the Government of South Sudan. This court should have resources "to investigate and prosecute individuals responsible for mass atrocities committed since 2013" (GCRP 2017a, 9–10). This is not without problems, but accountability for past human rights violations and fighting against impunity is crucial for the future development of South Sudan (see Deng & Deng 2014; Deng & Willems 2016). In September 2017, Kenya's Supreme Court made an important decision to invalidate the results of the presidential election held in August, rendering the results "invalid, null and void". The Supreme Court's decision "represents a victory for the independence of Kenya's judiciary and the rule of law" (ICG 2017).

The UNSC and the ICC are related, according to Article 13 (b) of the Rome Statute "A situation in which one or more such crimes (i.e. atrocity crimes) appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations". The UNSC, for the first time, in the Darfur conflict case, invoked Article 13 (b) of the Rome Statute, referring the Darfur case to the ICC with a resolution 1593 (2005). It thus took advantage of the legal powers given to it in the Roman Statute to refer situations to the Court under Chapter VII. This kind of referral is only starting the process, which means continued involvement by the UNSC in this process and support for the ICC. The ICC started proceedings against seven individuals, but the UNSC did not cooperate with the ICC. This approach, however, has not been effective in terms of ensuring peace and security in Darfur, nor later in Sudan and South Sudan (SCR 2013, 27–28; SCR 2015, 2–3). This also reflects the complicated relation between the ICC and the UNSC. The UNSC has referred a case twice to the ICC, and the other case was the Libya situation with resolution 1970 (2011) (see also Schabas 2014, 186–192). Resolution 1970 (2011) was accepted unanimously.

The UNSC has established and used the rule of law as part of its responsibility to maintain international peace and security, development, and the protection of human rights. The Council has emphasised the importance of the rule of law in “conflict prevention, peacekeeping, conflict resolution, and peace-building”. A general interpretation is that promoting accountability is an essential practice for maintaining international peace and security, while conversely, impunity and immunity can undermine peace and security. However, despite its rhetorical commitment to accountability as a principle, the Council has been inconsistent in its approach (SCR 2013, 1–3, 37; SCR 2015, 3). This rhetorical commitment is, however, not without value.

The 1948 Universal Declaration of Human Rights (UDHR) states in its preamble that “human rights should be protected by the rule of law”, but the definition of the concept at the UN has been formulated recently. The definition of the rule of law was given by the Secretary-General in his Report, “The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies” (UNSG 2004):

a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.

The rule of law has been used in many ways, by the UNSC as “a concept applying to states and other legal personalities”, as well as in applying certain normative standards by which “to measure the Council’s procedure and practice”. Additionally, it has been used to mean efforts “to restore law and order in post-conflict situations” or “good governance in domestic settings”. The rule of law has been used when needed “to end impunity and hold individuals accountable for their alleged crimes”. It has been used in connection with “conflict and post-conflict situations”, especially human rights and the protection of civilians. And finally, as the Security Council Report (2011, 11) states, “the Council’s reference to the rule of law is obscure” or “can be interpreted to have several meanings”, or in all of the above-mentioned ways. There is, however, a point to this kind of approach. The rule of law was used as a gateway to discuss human rights-related issues when it was not possible to do that. However, since 2006 after the Presidential Statement (S/PRST/2006/28), the rule of law includes human rights as an established Council practice. As the UNSC has the rule of law as part of its vocabulary, it can promote the protection of human rights without political sensitivities (SCR 2011, 11; 14).

When the UNSC identified individual accountability and ending impunity as falling under the mandate of the Council to maintain international peace and security, it was considered as a part of the development of the rule of law (see SCR 2013) and established



institutional architecture to advance the rule of law (see SCR 2015). It develops what Sikkink (2011, 12–13; 16–17) calls justice norms in the sense that justice means legal accountability for crimes. There are three ideas in this justice norm: a state should be responsible, grave human right violations are not legitimate acts, and they are considered crimes committed by individuals who can be prosecuted and who have a right to a fair trial. The justice norm is related to the human rights movement, the movement for accountability for past human rights violations, which includes both trials and also truth commissions as transitional justice mechanisms. Schabas (2014, 192) argues that justice is to be achieved by protecting human rights and justice needs political institutions like the UNSC.

Accountability can be defined as practices “where some actors hold other actors to a set of standards and impose sanctions if these standards are not met” (Sikkink 2011, 12). There are three accountability models: the impunity model, the state accountable model and the individual criminal accountability model. The most common model, the impunity model, started to disintegrate after World War II in the same vein as the state accountability model began to grow (Sikkink 2011, 14–20). It is the model used by the UN human rights machinery and perhaps has some support from the development of the individual criminal accountability model. However, these models function side by side and could be noticed from the workings of the UN and UNSC.

As mentioned earlier, both R2P and ICC are possible responses to mass atrocities. Do R2P and the ICC complement one another, or do they contradict each other? Both R2P and the ICC can help prevent mass atrocities. The ICC can deter mass atrocity situations, and the threat of prosecution might be enough to deter mass atrocities. This is difficult to know – as is also the case with R2P. If the UNSC refers a situation to the ICC, it is making a statement that those individuals in the conflict have violated international humanitarian law. While R2P aims to prevent or stop mass atrocities, the ICC punishes these perpetrators. The ICC is retrospective – punishing perpetrators after mass atrocities, thus fighting against impunity – but also prospective in its deterrence function. They could in principle complement each other very well, but the situation is not that simple (Mills 2014; Schiff 2012).

Getting justice via the ICC and fighting against impunity can complicate putting an end to a conflict. The question is raised: can we sacrifice justice in the name of peace (see Mills 2014; Schiff 2012) and also: at what point should we choose between peace and justice (Human Rights Watch 2009, 2)? Nonetheless, international law and practices ought to have developed to the extent that both justice and peace should be the objectives of peace processes (ibid., 8; see also Chidi Njagu 2014, Schiff 2012).

However, what the international community is willing to say and willing to do are not necessarily the same. R2P and international criminal justice imply different values than collective security (Bassiouni 2009, 41; see also Nasu 2013; also Creutz 2018).

Both R2P and the ICC have become the two important institutions of international human rights enforcement. However, some have argued that the efficacy of both R2P and



the ICC are compromised by the powers of the UNSC. Hehir and Lang (2015, 155) state how they function “as evidence of the framework being consolidated that enables selective censure rather than strengthening the formal procedures of normative legal order.” Some have also suggested that the ICC’s authority and credibility has suffered from its close ties to the UNSC and great power politics (Hoile 2014, 56–57).

However, although China, Russia and the US are not parties to the Rome Statute, the UNSC has given its support to the ICC in many thematic and country-specific resolutions. The Rome Statute gives the UNSC a unique jurisdictional role allowing it to refer situations in which “R2P crimes” may have been committed to the ICC. Most Council members support the referral in principle, but in practice the situation is difficult, as there could be strong opposition from China and Russia (SCR/mf 2014c, 2). The UNSC should develop a systematic approach to the ICC, and find out how the powers given the UNSC could better be used in country-specific situations (see SCR/mf 2012d, 6).

Although the UNSC has been active in developing international criminal law, its message has been unclear: should criminal indictment be pursued, or should non-judicial measures – such as truth commissions or amnesties – be favoured? Or should an attitude of indifference be taken (see Forsythe 2012, 862)? However, the ICC has established a symbolic function by raising global awareness of certain crimes such as “the use of child-soldiers, as well as gender-based and sexual violence” (Creutz 2018, 7) in terms of judging what is appropriate and what is not. In that sense, R2P and the ICC can complement one another.

Bull (1995, 94) argued how order and justice prevail at the same time in international society – like pluralism and solidarism. “Sometimes it is the struggle for just change itself that creates a consensus in favor of this change that did not exist when the struggle was first undertaken”. R2P might reflect this kind of idea.

## 2.3 R2P as a procedural institution

I have called R2P a procedural institution Holsti (2004, 25) has defined as an institution with repetitive and regulative practices (see also sub-chapter 2.2.2.1), thus implying that these practices have no reproductive or transformative characteristics. However, I suggest that R2P may reproduce and change the constitutive principles of sovereignty, human rights and great power management when discussed with ES institutional change theory. Sovereignty, human rights and great power management are the basic principles of R2P and at the same time primary institutions of international society. R2P may reproduce or change the practices of sovereignty, human rights and great power management and effect their constitutive principles.

### 2.3.1 R2P and sovereignty

Sovereignty is a contested concept and a principle without a single definition. According to Makinda (2002a, 118), it could be called a metaphor which legitimizes some actions and delegitimises others. R2P has been criticized for how it contradicts the traditional concept of sovereignty, and this is why some states have reservations about R2P. There are at least two main reasons for having reservations about R2P, and it seems states have grouped themselves into one of these two camps over a dividing line between north and south. Smaller states with a colonial history tend to be worried about their territorial sovereignty, while bigger states – like the United States, China and Russia – are worried about their freedom to act they have different concerns about how R2P might affect their sovereignty. However, Luck (2009, 2) argues that these “sovereignty-induced” ambivalences were addressed in the World Summit Outcome Document in 2005 (also Glanville 2016a, 151).

Badescu (2012, 5, 19–47) argues that R2P “addresses the “moral imbalance” between sovereignty and human rights” and that the sovereignty as responsibility is the answer to this imbalance, the idea therefore being sovereignty and human rights. R2P aims to strengthen elements of statehood, namely “the protection of people from organized violence” (Luck 2009, 14).

Holsti (2004, 112, 113) argues that if sovereignty as a primary institution of international society is defined “as a set of practices, ideas and norms” its meaning becomes clear since “it is a critical component of the birth, maintenance and death of states”. Internal sovereignty refers to “a supreme authority” within a given territory as a source of law that rise above any particular or ruling group. The external aspect of sovereignty refers to a state’s “constitutional independence” defining state’s legal space. Sovereignty is a legal status; a state either is sovereign or it is not (see Holsti 2004, 114; Sørensen 1999, 593). As Sørensen (1999, 593) describes, “X counts as Y in context C.” The X factor “are states with territory, people and a government”. The Y factor “is constitutional independence which is legal, absolute and unitary condition”. The C factor “is the international society of states. It is exactly this constitutive content which has remained the same and unchanged since the 17<sup>th</sup> century”. In this sense there is continuity, not change, in the institution of sovereignty.

As mentioned earlier, international society’s primary institutions are intertwined. Makinda (2002a, 115) argues that Bull’s institutions “were not givens, but contingent” and as such, there is a possibility for change. Accordingly, if the nature of wars has changed and states are experiencing mostly civil wars, then this must have implications for sovereignty, and how the UN Charter Article 2(7) and Chapter VII are interpreted. Holsti (2004, 142) argues that without sovereignty there would be no international law, while Jackson (1990, 53) states that “classical international law is the child and not the parent of states”.

According to Holsti (2004, 144–145), international law becomes institutionalized when

practices of most states, most of the time are consistent with its rules and norms; [...] a consensus prevails on the interpretations of these norms, rules and rights; and

[...] when the law has an authority that is independent of the interests of particular states.

International law is to be found in international treaties and conventions. There is also an understanding that violations of these rules and norms denote some kind of price to pay. However, violations of the rules do not make them less valid unless violations become common practice (see Holsti 2004, 144–146; cf. Spandler 2015).

“*Pacta sunt servanda*”, reciprocal obligation to keep promises, is an important norm in international law. However, although treaties are often violated, they do not violate this basic premise. Sovereignty is an important norm with legal equality in international society, with states having equal rights, duties and responsibilities. A sovereign state should, at least to some extent, follow the rules of the system if it wants to have political independence and recognition. Further, an important norm is that states make agreements by consent; they need not sign e.g. human rights treaties against their will<sup>23</sup>. One of the most important norms of international law is non-intervention – although not always respected and violated for a variety of reasons. Although practices may also change with respect to this last norm, it has not become obsolete since “most states, most of the time” observe this norm (see Holsti 2004, 150–152). However, as Kratochwil (1989, 61 in Holsti 2004, 153) notes, “Actors are not only programmed by rules and norms, but they reproduce and change by their practice the normative structures by which they are able to act, share meaning, communicate intentions, criticize claims, and justify choices.” However, this may be the point when R2P suggests making a difference.

There have been changes in the institution of sovereignty. Interpretations of sovereignty change with time, but changes happen in reproducing practices (Knudsen 2013; 2015; 2016; 2018; 2018a) or in sovereignty’s regulative rules (Sørensen 1999, 595). There have been changes e.g. in the rules of recognition – who decides who is sovereign (Holsti 2004, 114–115, 129; cf. Cerone 2011)<sup>24</sup>. Requirements have changed over time and with circumstances, but no state gains recognition of sovereignty just by making the claim. International society has its say in the process. Without recognition, diplomats cannot be exchanged, and treaties cannot be signed, so it is important for states. UN membership has great symbolic, but also concrete, value, especially for states looking for international legitimacy (Luck 2009, 16).

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23 See human rights record by state, <http://www.ohchr.org/EN/Countries/Pages/HumanRightsintheWorld.aspx>.

24 A new state comes into being when it meets so-called Montevideo criteria. A state must have the following issues: a population, a territory, a government and established relations with other states. Recognition is no longer considered necessary, as it is considered by many international lawyers only a declaratory act. Recognition is thus a political act or its withholding (Cerone 2011). Practice has in this sense changed. For Martin Wight (1977, 135, 136) mutual recognition of sovereignty was a primary institution. “It would be impossible to have a society of sovereigns states unless each state, while claiming sovereignty for itself, recognized that every state had the right to claim and enjoy its own sovereignty as well. This reciprocity was inherent in the Western conception of sovereignty. [...] the doctrine of the equality of states can mean no more than that all states recognize the right of all other states to equal treatment in law and in ceremony.”

Secondary institutions are constitutive as has been discussed earlier (see Spandler 2015, 610).

Change in the primary institution of sovereignty has occurred in the regulative rules of sovereignty (Sørensen 1999, 597). In other words, the practices of sovereignty are changing. R2P is changing the practices of sovereignty from sovereignty as non-intervention to sovereignty as responsibility. Koskeniemi (2011, 63) calls R2P “an initiative to redefine sovereignty as a responsibility towards the population”. Koskeniemi asks in his article “What Use of Sovereignty Today” and refers how for the international or global purposes sovereignty have been tamed down (*ibid.*, 61).

There is a debate as to whether sovereignty itself has changed, whether signing a treaty or agreement involves a surrender of sovereignty, or whether the processes of globalisation make sovereignty an old-fashioned idea. It could be said that a state cannot lose its sovereignty since it is a legal status. States, by signing treaties or agreements, are confirming their sovereignty, not undermining it. They confirm their sovereignty because they sign a treaty by consent (see Holsti 2004, 135–137) as only sovereign states can sign treaties.

People who say that sovereignty has been unchanged or there have been changes, most probably speak of different things. The “change people”, as Sørensen calls them, speak about changes in the concrete characteristics of statehood or changes of sovereignty’s regulative rules, or their combination. The “continuity people” speak of the rule of constitutional independence. The constitutive principles of sovereignty have remained the same, while change has happened in the regulative rules of sovereignty or reproductive practices, in Knudsen’s vocabulary. The regulative rules of sovereignty regulate sovereign states; how they deal with each other in war and peace, who is to be a member of the society of states and on what qualifications. Non-intervention and reciprocity are two important regulative rules of sovereignty or reproducing practices. The constitutive rules come first – these are unchanging, permanent – while the secondary, regulative ones change. The primary institution of sovereignty is to change according to the regulative rules of sovereignty (Sørensen 1999, 597–598).

Holsti argues (2004, 132–135, 141) there is only one exception when it comes to changes to the constitutive principles of sovereignty, namely the right of conquest. Conquest was a right in the 15<sup>th</sup> and 16<sup>th</sup> centuries Europe but since the 20<sup>th</sup> century, it has not been considered a legitimate act, and reference can be made to the League of Nations Covenant and the UN Charter. Should conquests occur within the international society today, they raise questions because of this. They are considered illegitimate actions against international law – such as Russia’s annexation of the Crimean peninsula in 2014. According to this interpretation, Russia’s act was problematic.

As mentioned, the tension between sovereignty and human rights, between pluralism and solidarism, is present in the UN Charter, which has been presented so both pluralist and solidarist interpretations are possible. The important articles for protecting sovereignty are 2(1), which stipulates that the UN “is based on the principle of sovereign equality of

all its member states". Article 2(3) stipulates that "All member states shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered". The threat or use of force against territorial integrity or political independence is prohibited. Further, 2(7) "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state." However, there are two exceptions to the protection of sovereignty, namely Chapter VII of the Charter, Article 42, which give the UNSC power to authorise the use of force to intervene if it finds there is "a threat to peace, breach of peace or act of aggression". Moreover, the UNSC determines when a threat to peace or breach of peace has been committed. The second exception is Article 51, which allows states to protect themselves from an armed attack. The use of force is allowed by UNSC authorisation or in self-defence until the UNSC has dealt with the issue (see e.g. Conlon 2004, 79–80; Glanville 2016a, 154–155). The UNSC is a political body, and its members are sovereign states whose interests and preferences affect the positions they take on different issues. These positions may change depending on the prevailing political context. Its decisions are thus inherently political (Bellamy 2016b, 256) and are affected and based on political debates at the UNSC.

R2P proposes no change to Article 2(7) but implies an agreement: normally, non-intervention applies but if states fail to do so, then other states with UNSC authorisation can intervene. To avoid any intervention, a state ought to adhere to its protection responsibilities (see ICISS 2001). This, of course, could be interpreted to function as a kind of deterrence but also, as a way how R2P is changing the principle of sovereignty as non-intervention to sovereignty as responsibility.

R2P also challenges some of the core ideas of sovereignty, like sovereign equality. R2P does not impose new legal obligations – it rather reiterates an existing legal obligation in relation to genocide, war crimes and crimes against humanity (see Arbour 2008, 451) – but raises important legal questions (see Orford 2011, 23–27; Komp 2013, 323–326; Badeascu 2012, 130–135; see also Peters 2011). Orford (2011, 27) concludes that the concept of R2P infers that "states are responsible for their citizens or population, while the UN, for its part, is responsible for the international community as a whole".

In Holsti's opinion (2004, 142), an analysis of the status of sovereignty, as recognised by international society:

State sovereignty is still a cornerstone of the international legal and political order, but to a growing degree the classical perception of sovereignty is challenged by the norm that the legitimacy of the exercise of the rights of sovereignty is dependent on respect for human rights [...] This is not an abrupt change from sovereignty to something else. The principle of sovereignty has throughout its 3–400 years history been continuously re-defined and modified. Although the form has been constant, the content has changed.

The principle of state sovereignty is not unchanged or absolute, but it is still sacrosanct (Tanguy 2003, 144). The survival of sovereignty should be understood in relation to other institutions of international society. If these institutions are changing according to new practices such as humanitarian intervention or R2P, the entire nature of international society changes correspondingly, and this relates to the idea that human rights and sovereignty can mutually reinforce one another, instead of laying in contradiction to one other (see Makinda 2002a, 117–118).

The ICISS (2001, 6.13–6.40) has given a prominent role and great responsibility to the UNSC in preventing mass atrocities, since it has the primary responsibility for international peace and security. It is the UNSC that decides about whether or not to override sovereignty. However, from the previous discussion on sovereignty, it can be observed that sovereignty is not an absolute idea or principle, since the reproduction of practices or regulative rules can change how sovereignty is conceived.

Sovereignty as responsibility, the idea R2P has provided, and which is increasingly recognized in state practice, promotes three objectives (see ICISS 2001, 2.15): *firstly*, state authorities are responsible for the protection of their citizens; *secondly*, national authorities are responsible both to their citizens internally and also to the international community through the UN and *thirdly*, state actors are responsible for their actions, and they are accountable. They are responsible for what they have done and what they have not done.

To think of sovereignty in these terms, as R2P does, means emphasising international human rights norms and human security, but not without challenges. Welsh (2010, 427–428) reminds that sovereign equality embedded in the UN Charter, and a radical idea of its time, might come back meaning that protection of human rights is always challenging.

### 2.3.2 R2P and human rights

Buzan (2004, 183–190) notes that human rights is a cosmopolitan institution but, at the same time, a shared value in international society. Buzan argues that human rights is not perhaps a primary institution itself but derived from the principle of equality of people, developed as part of decolonization. Respectively, colonialism was derived from a primary institution of international society up until 1945, with the inequality of peoples as its main principle. The idea that people are not equal was expressed by practices such as “slavery, racism, gender inequality, dynasticism, and imperial rule” (Buzan 2014, 107). These ideas are by no means, unfortunately, dead or gone<sup>25</sup>.

The idea of human rights as a “standard of civilization” comes from the 19<sup>th</sup> century. There was a practice of making states and peoples different in hierarchical terms of “civilized”, “barbarian” and “savage” (Buzan 2014, 17). In this sense, Jack Donnelly’s article (1998) “Standard of Civilization”, reflects how human rights have become the main criteria

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25 It was estimated that in 2016 45.8 million people were in some form of modern slavery in 167 countries (The Global Slavery Index 2017).



for being a member of international society by reflecting this “standard of civilization”. As Buzan (2014, 158) states, this, in itself, means solidarism. However, the consensus that now exists in international society is not a natural state of affairs but an “inter-subjectively generated commitment” (Dunne & Hanson 2016, 48) which needs constant work.

The concept of human equality is important for human rights because it is the main idea of universality (see e.g. Beitz 2013, 45) and without it, the human right principle cannot be applied (see Reus-Smit 2011a, b). The basis for universalism is human dignity. However, human rights documents cannot define the substance of human dignity. Bielefeldt (2009, 6–7) refers to the Preamble of the Universal Declaration of Human Rights (1948), “the inherent dignity and [...] the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world” and states how human dignity represents the equality of humans. Equality means equal opportunities to realise one’s plans, live up to one’s conviction. This does not undermine cultural diversity, on the contrary, because “the principle of equality represents the aspiration that diversity should not remain the privilege of those who can economically afford to cherish their particular cultural needs” (ibid.).

The norm of human inequality prevailed for a long time despite resistance movements such as the campaign against slavery in the 19<sup>th</sup> century. Human equality in the Charter of the United Nations (1945) replaced it and was expressed further in the mentioned Universal Declaration of Human Rights (UDHR) in 1948 (see Normand & Zeidi 2008). The codification of human rights in a systematic manner has evolved, and since the UDHR of 1948, treaties, agreements and declarations have described the rights of individuals against their government and with reference to others (see e.g. Normand & Zeidi 2008). Dorothy Jones (quoted from Holsti 2004, 157) calls this body of human rights treaties<sup>26</sup> a contemporary “code of international ethics”. The Convention on the Prevention and Punishment of the Crime of Genocide was approved just before the UDHR and although it took a long time up until 1966 before the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights were accepted, establishing the UN Human Rights Framework (see Normad & Zaidi 2008, 139–246), it was remarkable and showed “normative striving” (Jolly, Emmerij & Weiss 2009, 57).

The UN Charter and provision of human rights – unlike the League of Nations Covenant where human rights were not mentioned – are directly related to issues of state, sovereignty, security, and humanitarian intervention (Roberts 2003, 53–55; Normand & Zaidi 2008, 107–138; Makinda 2005a, 947–952). Including the Preamble and Article 1, human rights were mentioned seven times; Article 13(1)(b) empowers the UNGA to promote co-operation in the economic, social, cultural, educational and health fields and assist “in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion”. According to Article 55 (c), the UN shall

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26 See The Core International Human rights Instruments and their monitoring bodies <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx>



promote “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion”. Article 62 (2) empowers Economic and Social Council, ECOSOC to “make recommendation for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all”. Article 68 empowers the ECOSOC “to set up commissions in economic and social fields and for the promotion of human rights”, and according to Article 71, the ECOSOC should make suitable arrangements with NGOs for consultations. These articles empowered the UN to develop human rights, but the question remained: did recognition of human rights in the UN Charter impose limitations on state sovereignty (see Normand & Zaidi 2008, 133; 137; also Jolly, Emmerij & Weiss 2009, 50–67; and Conlon 2004, 80–85)?

The Charter has made several provisions for human rights in which order and justice issues are presented, and Koskeniemi (1995, 337) argues, “The Charter’s textual imbalance was compensated by the practice that raised social, economic and humanitarian activities to the core.”

As an example, Article 2(7) prohibits interference in the internal affairs of member states; non-intervention principle/practice is written in the UN Charter. However, massive violations of human rights and humanitarian emergencies have come to be interpreted as “a threat to international peace and security”. Using this argument, the UNSC has been able to mandate operations to protect civilians and human rights. The ICISS report (2001) proposed that there is no right for intervention; state sovereignty means responsibility. This idea associates sovereignty with state responsibility and as such, a state’s responsibility to protect its own population is an integral part of sovereignty. As such, sovereignty means to respect human rights. As Kofi Annan (1999, 1) states, the aim of the Charter is to protect people, and not those who abuse people. Human rights can be defined as the standard for domestic institutions “whose compliance is a matter of international concern” (Beitz 2013, 128).

In addition to the UNSC discussing human rights issues and showing a growing interest in humanitarian protection (Bellamy 2016b), in 2006, the UN established the Human Rights Council (HRC) (see Terlingen 2007; Ramcharan 2011; see also Jolly, Emmerij & Weiss 2009, 62–65). Human rights are mentioned as the third pillar of the UN, together with peace and security, and development. The Human Security Council was conceived as a principal body within the UN system, but it now functions as a subsidiary body of the General Assembly (GA).

With GA resolution 60/251 (UNGA 2006) in March 2006, the HRC was established, and the UNGA was

Reaffirming further that all human rights are universal, indivisible, interrelated, interdependent and mutually reinforcing and that all human rights must be treated in a fair and equal manner, on the same footing and with the same emphasis;

Reaffirming that while the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, all States, regardless of their political, economic and cultural systems, have the duty to promote and protect all human rights and fundamental freedoms;

Emphasizing the responsibilities of all States, in conformity with the Charter, to respect human rights and fundamental freedoms for all, without distinction of any kind as to race, colour, sex, language or religion, political or other opinion, national or social origin, property, birth or status; Acknowledging that peace and security, development and human rights are the pillars of the United Nations System and the foundations for collective security and well-being, recognizing that development, peace and security and human rights are interlinked and mutually reinforcing.

The task for the HRC is to promote but not to protect human rights. However, the HRC could have been more efficient, as it was hoped for (see Jolly, Emmerij & Weiss 2009, 63–64).

Human rights have been criticized in many ways (see e.g. Chandler 2013). They are abstract, indeterminate and conflictual; they can never be absolute. This leaves it open regarding how they should be implemented in practice. Human rights can be understood in different ways in different cultures, while, at the same time, they are said to be universal. Universalism can give the impression that human rights implementation is without difficulties. However, most of the rights are controversial and conflictual, meaning that interests related to human rights are different (Koskenniemi 2005, 5; Langlois 2016, 24–25). The human rights movement is thus a political movement.

The political project of human rights has entailed a fight against existing power structures to develop a social environment that would be more just (Langlois 2016, 24–25; also Niemelä 2008, 52). A political reading<sup>27</sup> of the history of human rights states that the origins of these rights<sup>28</sup> are in experiences of structural inequalities, rather than in some Western cultural traditions. Bielefeldt (2009, 15) argues that the “common experience of injustice” is more important. Human rights are relevant to all people living in all cultural contexts “whenever they struggle for justice”.

Human rights do not mean a perfectly functioning civil society, or giving pieces of advice on how things between different groups are to be organized. Nevertheless, they are important and useful when protecting people from human rights violations and mass atrocities because they “provide the ideal against which the status quo is measured and protested against” (Niemelä 2008, 58, 55). It could also be said that the language used in

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<sup>27</sup> Bielefeldt (2009, 10–13) is discussing two readings of the history human rights. The other one is the quasi-biological interpretation of human rights meaning a tendency to place human rights in the Occidental tradition, moreover, it is an apolitical interpretation which denies the different historical conflicts which have taken place for human rights. See also Bielefeldt 2000.

<sup>28</sup> For the history and idea of human rights, see e.g. Krause & Scheinin 2009; Klug 2001; Koskenniemi 2001; Normand & Zaidi 2008; Donnelly 2013; Beitz 2013; Robertson 1999.

determining human rights – the inherent dignity of all humans – implies “a common identity for humanity” (Makinda 2002a, 122).

Beitz (2013, 42) argues how human rights constitute a practice – a set of rules which regulate the behaviour of actors – and how these practices are relatively well established to provide a criteria for action.

After World War II, “human rights talk” gained a prominent position. Many contesting issues have been expressed in this language of human rights, which could be said to mean how it is one of the most important normative developments in world politics (Dunne 2007, 269; 284).

Human rights mean that humans have an obligation towards other humans “regardless of nationality, race, gender, colour, citizenship and other differences” (Shue in Makinda 2005a, 944). There is an interest and obligation to help those who live under repressive governments, e.g. Sudan or South Sudan or Syria. Human rights can mean new normative principles and political practices (Makinda 2005a, 944). As mentioned, human rights are claims against the state; human rights instruments are implemented by the state and by the consent of the state. Thus, the “nature” of the state is important.

Mass atrocities is a grave insult to human rights. Mass atrocities are not only a threat to their victims, but to all humans. That is why they are defined both politically and legally as crimes against humanity. They pose an offence to all humans and that is why they constitute a threat to both international security and human rights; human rights are at the centre of the security discourse (Adams 2013; see also Makinda 2005a).

Secretary-General Kofi Annan (UNSG 2000) put forth his famous question:

if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to Rwanda, to a Srebrenica – to gross and systematic violations of human rights that affect every precept of our common humanity?

One answer to this is R2P, which promotes the concept of sovereignty as responsibility (ICISS 2001, 2.18; 2.15; see also Deng et al. 1996). Human rights norms contribute to thinking about sovereignty in these terms (ICISS 2001). Makinda (2005a, 946) summarises human rights by saying how “human rights are a discourse promoting human freedom, justice, solidarity and equality beyond national boundaries” and they operate both within and beyond states.

In 2013, Secretary-General Ban Ki-moon initiated “Human Rights Up Front” (HRUF), to get a cultural change within the UN system, which was meant to promote the protection of human rights and civilians, and to emphasise preventive efforts (UN 2013; Eliasson 2015; von Einsiedel & Bosetti 2016, 372). The relationship between HRUF and R2P is not mentioned in the “Rights Up Front” Action Plan (HRUF 2014), since this initiative was meant as a coordination tool for the UN Secretariat, but it affects the whole system. Both the HRUF and R2P are, however, related with regard to preventing human rights violations. Boon (2014) estimates how HRUF could act as a means to implement pillar II

of R2P, but no clear plan is represented regarding its use. HRUF is an effort to use civilian tools in peace operations to strengthen the justice and security institutions of a host state. In this way, it could be interpreted to be part of pillar II practices (Salama 2015). HRUF was also launched to avoid catastrophes the likes of Sri Lanka in 2009, where the UN's response to serious human rights violations was "inadequate, incoherent and ineffective", and extremely cautious when protecting civilians in danger (Kurtz 2015).

Most UN peacekeeping operations have a mandate "to promote and protect human rights by monitoring and helping to investigate human rights violations and/or developing the national actors and institutions capacity to do that themselves" (UN 2008, 27), meaning pillars I and II of R2P. This has developed since 2000 after SG Kofi Annan convened his High-Level Panel (UNSG 2004). The fact that peace operations have a human rights component is natural, as international human rights law is a part of UN peacekeeping operations, and the mandates reflect broader normative debates which are ongoing (see UN 2008, 14–16). Human rights norms and increasing acceptance to protect civilians from grave human rights violations – i.e. R2P – have stressed connections between human rights and UN peacekeeping (Katayanagi 2014, 128–130).

When discussing human rights and R2P, humanitarian intervention should be mentioned, although discussed earlier, to show how institutions and practices are interrelated. The question here is whether using force should be used for humanitarian purposes.

The long history of humanitarian intervention was recognized in the ICISS report (2001, the appendix). It made a deliberative decision not to adopt the prevailing terminology, but speaks of "military intervention for human protection purposes" (ICISS 2001, 1.39; see also 4.1.–4.43). In pillar III of R2P, a "timely and decisive" response approves of military means for human protection purposes, while it *reproduces* the idea that the use of force in international society is reserved for the common good and promotes a solidarist understanding of international society (see Knudsen 2013; 2016; 2018; 2018a). The idea to describe the grave violations of human rights as a threat to international peace and security – and belonging to the competences of the UNSC – has produced practices that have become increasingly standardised<sup>29</sup>. It was in 1991, when the UNSC named repression as a threat to international peace and security for the first time in Resolution 688, "condemning the repression of the Iraqi civilian population, the consequences of which threaten international peace and security in the region" (see SCR 2016, 3; Holsti 2004, 160). The UNSC has acted without consent of the target government in e.g. Iraq, Somalia, Bosnia, Haiti, Libya. However, the use of force was not especially successful in these cases.

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29 For the evolution of human rights at the UNSC, see Security Council Report 2016; also Genser & Stagno Ugarte (eds) 2016. When the UNSC has considered human rights and also when avoiding discussing human rights, it has not been especially logical. However, when it has been possible – meaning its internal politics – it has used its powers to advance human rights, thus showing "tremendous flexibility and creativity" (Stagno Ugarte & Genser 2016, 30).

There is a possibility that the norm of non-intervention becomes increasingly qualified. Although non-intervention norm is included in all most all international treaties, covenants, and charters, it is also often violated in practice (Holsti 2004, 160–162).

From this, it could be concluded and argued that primary institutions are intertwined. “Most of them depend on others for their reproduction or they are mutually constitutive” (see Knudsen 2015, 19). How R2P reproduces or changes the constitutive principles of sovereignty and human rights depends on political debates in the UNSC, signifying its R2P competent practices.

### 2.3.3 R2P and great power management

For Bull (1995, 196), the idea of great power implies the existence of international society. Great powers for him are powers the others recognise as having special rights and duties. These powers accept these duties and act accordingly.

The great powers have had permanent membership both in the Council of the League of Nations and the UNSC. Permanent members of the UNSC – China, France, the United Kingdom, the Russian Federation, and the United States, the P<sub>5</sub>, have the veto power,<sup>30</sup> and veto power is constitutive of great power management (see Friedner Parrat 2018). This system has received much criticism, whether proportionally (in 1945, the Council consisted of 11 members out of a total of 51 member states; now there are 15 members out of a total of 193 member states), geographically or politically (Tharoor 2011). As Friedner Parrat (2018, 92) notes, there are candidates for great power status other than P<sub>5</sub>. In this research, the P<sub>5</sub> are considered great powers as they constitute the workings of the UNSC.

As Bull (1995, 196) states, e.g. UNSC membership is not the reason for their rights and duties but implies others’ recognition of these rights and duties. Jackson (2000, 173), as a representative of the pluralist view of international society, notes how the “biggest mistake” anyone could make is to ignore the special responsibilities and moral significance of the great powers, and there is “a special international ethics” related to international order and the great powers: “The great powers are the guardians of international peace and security” (ibid.). This has been written in the UN Charter in Chapter VII: “Action with respect to threats to the peace, breaches of the peace, and acts of aggression”, with a special role for the UNSC and its permanent members (see also articles 24(1,2) and 27(3) of the UN Charter).

The most important role for the great powers is to manage their mutual relations and contribute in this way to international order, peace and security. They should act in a way that works for it and not against it, and one way to do this is joint action implied in the idea of great power concert. They should conduct their foreign policies accordingly, which entails that they can legitimately be criticized if they are not meeting this responsibility (Bull 1995, 200). Bull’s view of great power responsibility has also been criticized. Jackson

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30 More about the veto power in sub-chapter 2.3.3.3.

(2000, 375–376) argues the great powers should uphold international order “by imposing their strong and irresistible political wills on everyone else and using their coercion to derive maximum advantages and benefits from that situation”.

Bull (1995, 200–201) also notes the great powers are not always working for international order, as they sometimes only play the role of upholding international order. They often can “promote disorder”, “upset the general balance”, “create crises”, “try to win wars”. According to Makinda (2002, 367), Bull also noted that great power status is not evident. If they promote disorder more than order, they could lose their role as great powers. However, as under the current system of the UN, the great powers are permanent members of the UNSC, itself “a form of great power management” and thus also important to global governance defined as “formal and informal sets of arrangements for managing common issues, resolving conflicts and accommodating diverse interest” (Makinda 2002, 367, 364; see also Knudsen 2013, 25–26).

However, great power management does not issue equal justice or power for all states. They have the constant problem of needing others’ consent to uphold their special status (see e.g. Bull 1995, 199, 220–221). Reforms to the UNSC have been attempted for a long time with no mentionable success (see e.g. Schaefer 2017; also Friedner Parrat 2018), as it is not to be presumed that the P5 would give up e.g. their veto power. Tharoor (2011, 400–401) suggests that the inability to reform the UNSC is a discredit to the entire UN. Of the P5, the United Kingdom and France have expressed these views, and they can slightly be pro-reform as the discussion concerns only expanding the number of permanent members, not reducing it. Russia has officially supported the reform and backed Germany, Japan and India have permanent seats. The United States and China are more skeptical (see also van der Putten 2015, 14–15). However, changing the UN Charter is difficult (see Chapter XVIII of the Charter, Amendments).

Makinda (2002a, 116) notes how pluralists have traditionally emphasised the centrality of great power management as could be noticed from Jackson’s statement. If the great powers reach a consensus e.g. on the interpretation of sovereignty as responsibility, meaning an acceptance of humanitarian intervention for the sake of grave human rights violations, it would be consistent with the idea of a normative understanding of a pluralist international society. If the great powers (great power management) consider that human rights supersede state sovereignty, the actions they take would be according to the changing rules. This all underscores the importance of great power management and how institutions are interrelated. If the great powers adopt new practices, international society faces changes (Makinda 2002a, 117; see also Weinert 2011; Knudsen 2015; 2018; 2018a; Friedner Parrat 2017). The great powers and great power management can also contribute to a solidarist international society. The Security Council has changed its definition of what constitutes threats to international peace and security to include grave violations of human rights and human rights that can “function as standards to which the international community may hold each country’s institutions accountable” (Beitz 2013, 44).



The UNSC has institutionalised great power management. The P<sub>5</sub> has the main responsibility for the maintenance of order and justice, and it has a veto power to prevent possible internal differences (Nasu 2013). The practices thus institutionalized mean rather for collective management of order rather than individual great power hegemony (Knudsen 2015, 10). However, there is a growing P<sub>3</sub>–P<sub>2</sub> (the US, France, Great Britain vs. Russia, China) divide at the UNSC, and there can also be individual great power hegemony. To prevent great power hegemony, the veto power was established.

Makinda (2002a, 116) sees great power management “as a relic of imperialism”, and Holsti (2004, 25–26) sees it as a status, not an institution. According to Holsti, there is “an idea of the great power”, but it does not meet Holsti’s criteria of patterned practices. Holsti also notices that the great powers have been the problem, “not the solution for international peace and security” and “a distinct status does not lead to consistent policy”. Holsti (2004, 26) gives an example of former President George W. Bush’s administration – in its unilateralist and frequent norm-violating foreign policy behaviour – which is inconsistent with the idea of the great powers having special responsibilities (see also Makinda 2002, 367; also Debrix 2005). The same can be said e.g. when thinking about the Russia and Ukraine conflict or US President Trump’s behaviour on different issues in Middle East policies or climate change issues, or how the UNSC is divided on the Syria crisis (see e.g. Gifkins 2012). The great powers can have strong political interests in some conflicts which can prevent early action to address visible risk factors (Syria) or they can have close relations to governing elites, which entails an unwillingness to take up inter-communal hostility and serious human rights violations (South Sudan) (cf. SCR/mf, 2014d, 2).

Also, there has been a willingness by the great powers to keep up the main narrative of a progress-making new country (Welsh 2016, 224–225). South Sudan could be an example of this. The UNSC considered South Sudan a “post-conflict developing country” rather than a weak, conflict-prone new country where all the important questions according to the Comprehensive Peace Agreement, CPA were unresolved (Malan & Hunt 2014, 17)<sup>31</sup>. The UNSC stated how it was, according to resolution 2057, (2012) “deeply committed to seeing South Sudan become an economically prosperous state living side-by-side with Sudan in peace, security, and stability” but at the same time, “deploring the persistence of conflict and violence and its effect on civilians, including the killing and displacement of significant numbers of civilians”. The Council also emphasised that “national ownership and national responsibility are key to establishing sustainable peace” (S/PRST/2011/4). However, this could be interpreted to mean a pluralist stand from the great powers to uphold order.

Buzan (2014, 103–104) refers to Simpson (2004) when defining a shift from the practice of Westphalian sovereign equality to a strong form of “legalized hegemony” the great powers are thought to have, and are having, meaning “a managerial responsibility” for international order. At the League of Nations after 1919, and at the UN, the Security Council after 1945, both bodies had and have this structure. Sovereign equality prevails

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31 The US is holding pen for Sudan/South Sudan issues.



in the assembly and legalized great power hegemony in the smaller council, now in the Security Council.

### 2.3.3.1 *The UNSC – a great power concert and governance perspective*

A great power concert is one practice of great power management (see Knudsen 2015, 10), in other words, joint efforts made to promote common policies (Bull 1995, 218). Bosco (2014) argues that the P<sub>5</sub> represents a concert of great powers, and impact could be assessed accordingly. The UN Charter has established the UNSC's governance function, which relates to the collective security system providing security for all states with the help of all other states (Bosco 2014, 546). Since the Cold War, the UNSC has tried to deal with thematic issues such as mass atrocities and genocide, climate change, small arms, the proliferation of weapons of mass destruction, and environmental issues. These thematic debates have meant significant normative developments, but the UNSC has not been as successful in different country-specific situations (SCR 2018, 2).

An alternative view to this is to see the UNSC's work as the mentioned concert approach, meaning changing the focus from the UNSC's capacity to resolve external challenges to its ability to manage P<sub>5</sub> relations (Bosco 2014, 546). Bosco (ibid., 548–549) discusses attributes of the great power concert. Firstly, *membership is limited to the major powers*, and the five permanent great powers have operated as a separate community within the UNSC like negotiating draft resolutions among themselves (see also SCR 2017; 2018a). Secondly, a concert needs *consensus* to operate. Thirdly, a concert is *a political establishment*. The issues are resolved by political discussions and, if they decide not to act, this does not violate the great power concert because the UNSC alone determines when there is a threat to international peace and security (Wellens 2003). Bosco (ibid.) also argues that the UNSC should not act if P<sub>5</sub> has not reached a consensus which is the idea of the veto power they have. Fourthly, the goal for concert acting is the preservation of P<sub>5</sub>'s *internal harmony*.

Bosco (2014, 550) takes up an important concept when considering P<sub>5</sub> “as a political concert rather than seeing it as a part of a governance body”. This gives a different idea of the UNSC's effectiveness. Discussing the UNSC's and P<sub>5</sub>'s effectiveness in maintaining international peace and security by resolving conflicts, or rather whether there have been deepening diplomatic contacts inside the P<sub>5</sub>, gives a different picture of their work. Although these two functions could be thought of separately, in practice they are intertwined. If P<sub>5</sub> finds a consensus in resolving conflicts, e.g. over the Syrian conflict, then it has direct effects on international peace and security.

Because of the Syrian conflict, there is an idea that the Council is divided, but this is not the whole picture. The Council is not as divided as could be thought; on the contrary, it works mostly by consensus. Presidential statements are adopted by consensus, press statements need the support of all 15 members of the Council, sanctions committees and working groups operate by consensus. Resolutions are the only decisions which can

be adopted without consensus. However, most resolutions are adopted by consensus. The Council has a more consensual approach to African issues compared to e.g. Middle East issues. Of the African resolutions, only 20.6 percent since 1990 have not been adopted by consensus. Since 2000, China has been more consensual than before, Russia abstains fairly often, and as P<sub>3</sub> is holding pen in most Council items, it is also most consensual. The Security Council Report (SCR/mf 2014d, 2) argues that when the Council adopts resolutions by consensus, it has a united voice and a stronger voice inside and outside the Council. However, this necessarily also means compromises in the language used in the Council.

Dunne (2014, 2) states further when discussing the UNSC and Syria, that the UNSC does not have “the capacity to solve crises of this scale”. However, a P<sub>5</sub> concert function was effective in responding to the chemical attacks in 2013. The US-Russia disarmament process made possible a concert action, and Dunne asks, “Why was it possible to find a collective solution to the threat of chemical weapons and not to the 1033 days of mass destruction by conventional means?” Dunne gives as his explanation that the use of chemical weapons was considered as a threat to international order, while mass atrocities committed by conventional weapons were understood as violations of justice. In this way, the latter was more challenging, if that is possible. R<sub>2</sub>P – aimed at mass atrocity prevention – is dependent on other institutions and if the great powers, the P<sub>5</sub>, in the Council, do not support action, the UNSC cannot act. Dunne sees the situation similarly to Bosco – if there is no consent among major powers, it is better not to act, as R<sub>2</sub>P will then only be weakened (ibid.; cf. Libya; see Gifkins 2012).

Conversely, it could be said that R<sub>2</sub>P can be understood as a “special responsibility” given and accepted by Council members at the World Summit in 2005. R<sub>2</sub>P holds a form of accountability for use of the veto in mass atrocity crimes, in which the national interest should be balanced against responsibility for the international community, and the UNSC has a special duty in this (Komp 2013, 329–330; ICISS 2001, 6.13).

### 2.3.3.2 *Dual responsibility of the UNSC and permanent members P<sub>5</sub>*

After the adoption of R<sub>2</sub>P, the UNSC and P<sub>5</sub>, have faced a dual responsibility, meaning a special responsibility to maintain international peace and security and a special responsibility to protect populations from mass atrocity crimes when their host state is unwilling or unable to do so. It has been argued that these two responsibilities can be, at least potentially, in conflict with each other. The Council’s original mandate to maintain peace and security is supplemented with humanitarian aspects. This is what gives reason for this dual responsibility rather than being considered a “*relocation of responsibility from international security to human rights*” (Morris 2015, 400, 410). Therein lies the functional division of labour between the UNGA and the UNSC (Koskeniemi 1995) and the issue of the procedural contestation and substantive contestation of R<sub>2</sub>P between the UNGA

and UNSC (Welsh 2013, 367, 382–386). The Secretary-General, in his report *Implementing the responsibility to protect* (UNSG 2009, para. 70, 29), sees a need “to reaffirm the complementary and mutually reinforcing roles of the General Assembly and the Security Council in carrying forward this urgent mandate.”

This contestation also relates to the competing norms, or competing obligations, of the UNSC: a special dual responsibility to the victims of mass atrocities on the one hand, and interstate order on the other. The problem is around the debates of order and justice, pluralism and solidarism (see Morris 2015, 418; Welsh 2013). R2P was meant to bridge these questions, and although the P5 are largely united on R2P-related issues (Pillars I and II, divided in Pillar III), certain tensions divide the P5 along a P3–P2 axis (the US, France, the UK vs. Russia and China) (see Rae 2016; Teitt 2016; Staunton 2015; Ralph 2015; Blätter & Williams 2011, 316–318). What unites the great powers in this is that they accept the existence of such divisions and that they have the right to consider these differing views (Morris 2015, 420, 401).

Both China and Russia have endorsed R2P but have differing ideas than the P3 on matters of sovereignty, non-intervention and human rights. For China, it is the responsibility of the sovereign government to protect its population and their human rights. However, by supporting R2P, China has, as Kozyrev (2016, 333, 339) argues, a dual role as a “responsible global power” to balance Western normative discourse by supporting the global agenda as a “constructive participant” and defending sovereignty as non-intervention. This sovereignty-human rights divide means the struggle over the principles of world order; sovereignty is a fundamental value and everything else comes after that (see also van der Putten 2015, 15; Tang 2018, 37).

As mentioned previously, Russia accepts pillars I and II of R2P, stressing state sovereignty, but problems come with pillar III. Ziegler (2016, 348) argues that Russia’s approach to R2P comes from two perspectives. The first relates to international and geopolitical issues, to Russia’s position as a great power and the protection of state sovereignty. The second perspective, according to Ziegler, is a domestic and ideological one that reflects Russian’s attitude towards Western liberal values; R2P represents Western liberal values – as liberal humanism challenges the doctrine of sovereign equality (see also Clunan 2018, 47). Human rights and human security are national concerns, not international for Russia, and it would be satisfied to return to the great-power management system of post-World War II and for its great power rights to be respected (Ukraine, Georgia, Kyrgyzstan). Russia considered as shocking e.g. the separation of Kosovo, aggression against Iraq and Libya (Clunan 2018, 50, 57). Since the Libya case, China has changed its international behaviour towards national interest and strategic considerations, despite its role as a constructive participant in the global agenda (Kozyrev 2016, 334).

In “The Place of Human Security in Collective Security”, Nasu (2013, 103) discusses how the human security discourse takes place within the UNSC agenda, yet it is one thing to discuss human security issues, and another to do something about them (see also Hehir

2015). The question of taking up human security issues and thus giving them priority conflicts with the UNSC's traditional mandate to maintain peace and security. However, the UNSC has taken human security issues seriously by integrating human rights protection into peace operations (Nasu 2013, 103; see also MacFarlane 2007; Bellamy 2016).

How should the UNSC address human security issues? The Council determines when there is a threat to peace and security, since there is no definition for that in the Charter. The definition has come to encompass increasingly serious human rights violations, and this practice, according to Nasu represents the UNSC's broader understanding of international security, including human rights issues. As Nasu (2013, 129) concludes, human security issues have been mainstreamed into the UNSC's practice, but at the same time have put tensions on the UN collective security system which is based on a traditional understanding of security. This also relates to the idea of the UNSC's dual responsibility, discussed above.

### 2.3.3.3 *The veto power, special responsibilities and responsibility not to veto – RN2V*

All states have generalised responsibilities to live up to R2P, while the UNSC as an institution and P5 as a sub-set of the Council's membership, have special responsibilities (Dunne 2013, 465). This has caused problems for great power management and the working of the UNSC. The UNSC's permanent members, the P5, have veto power, and they are not obligated to give any explanations for using this power (see Blätter & Williams 2011, 305). The right of veto means a special responsibility to contribute to international order and justice, but great powers also "have a disproportionate burden" (Dunne 2013, 458–459)<sup>32</sup>.

The ICISS (2001, 6.21) suggested there be "a code of conduct" for the use of veto. The idea is that the P5 would not use veto power unless vital national interests are involved and special responsibility they have would be better met if the veto was not used in situations where widespread human rights violations are occurring (see Blätter & Williams 2011, 304). The ICISS (2001, 6.21) further noted that it is not realistic to wait for any amendment of the Charter concerning veto power, so adoption of this kind of "code of conduct" would be in place<sup>33</sup>.

Also the Secretary-General, in his Report "Implementing the responsibility to protect" (UNSG 2009, para 61, 26–27), states that the five permanent members bear "particular responsibility" because of the veto power and urged the P5 to refrain from using or threatening to use their veto power when "there are reasonable grounds to believe that mass atrocities have been committed".

Blätter and Williams (2011, 311–313) refer to e.g. Rwanda and Darfur when thinking about the P5 veto power and the response to mass atrocities. In the case of Rwanda (1994),

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32 For the history of the veto, see e.g. Security Council Report "The Veto" (2015a).

33 See UNSC code of conduct, [http://www.globalr2p.org/our\\_work/un\\_security\\_council\\_code\\_of\\_conduct](http://www.globalr2p.org/our_work/un_security_council_code_of_conduct); also <http://www.un.org/en/genocideprevention/security-council.html>

the P5 did not threaten to use a veto, but they used their informal power to prevent action to protect victims of genocide. The Darfur case (2003–2006) was controversial because both the Chinese and Russian governments communicated to use their veto on any UNSC resolution to authorise the use of force or economic sanctions against the Sudanese government in Khartoum. However, the Darfur case was referred to the ICC by the UNSC, Resolution 1593 (2005) (adopted by vote 11 favour, none against, 4 abstentions – Algeria, Brazil, China, the United States).

The Responsibility Not to Veto (RN2V) was originated by France during a roundtable discussion in the framework of the ICISS,<sup>34</sup> but otherwise P5 members have not discussed this issue in public. Blätter and Williams (2011, 321) estimate how RN2V could be seen as having its own place within a broader set of policies in the effort to implement the R2P agenda.

Reinold (2014) argues that the RN2V tries to make the Council's response to mass atrocities more consistent and predictable, thus contributing to the UN's original task. She (2014, 274) is using Hart's (1961) definition of secondary rules: rules which govern the interpretation and application of primary rules. Further, she refers to RN2V as a "secondary rule" which governs implementation of the Council's primary norm of responsibility to protect.

RN2V is an important proposal, as the normative expectations for the UNSC and international organizations have grown. They should obey the rule of law standards they seek to promote in other member states (Reinold 2014, 283). Reinold argues that RN2V indicates how international organizations are subject to the rule of law standards (see also S/2015/978). This is important for international society and for the role of secondary institutions in international society.

The so-called S-5, a group of smaller countries – Costa Rica, Jordan, Liechtenstein, Singapore, and Switzerland – drafted a resolution in May 2012 in the General Assembly as part of the follow-up to the outcome of the Millennium Summit, asking the P5 to abstain from using its veto power in mass atrocity issues and asking them to give an explanation for any use of the veto. The idea was to affect R2P implementation and expose the gap between the use of veto in mass atrocity issues and internationally accepted rules. The S-5 faced opposition from the P5 but support from other members. The S-5 continued consultations on the matter (Reinold 2014, 285–287; Blätter & Williams 2011, 316; Morris 2015, 414) and has now expanded to the Accountability, Coherence and Transparency (ACT) Group, with 25 members to continue the work. Also the Elders, a group of independent global leaders, have made a proposal to the UNSC's permanent members "not to use, or threaten to use, their veto" (see GCRP 2015; 2015a).

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34 For the history of the RN2V, see e.g. Blätter and Williams 2011, 313–318; Reinold 2014, 283–293; Security Council Report 2015a.

Russia and China have used their veto power in Syria resolutions<sup>35</sup> stressing Syria's sovereignty, political independence and non-intervention but condemning the killing and suffering of innocent civilians, which reflects the Libya case (see Reinold 2014, 287; also Dunne & Gifkins 2011; Hehir 2016, 174–178). As Morris (2015, 415, 418) argues, the ever-growing significance of the RN2V proposal depends on the UNSC failure to deal with the Syria conflict but also how it clearly showed the inconsistency of some P5 member states' behaviour. This is also a question of “normative claims and counterclaims”, which is the currency the UNSC uses. It could also be argued that the proposal of RN2V undermines the very idea on which the great power consensus of the UNSC is based (see also Reinhold 2014). It has been argued that the Russian and Chinese behaviour in the Syria case reflects a strategic clash between P3 (the United States, the UK and France) and P2 (Russia and China) and not so much the alleged misuse of R2P – mandate overreach – in Libya (Adams 2015, 20). Also, the UN's and Council's inaction on Syria is said to be mark “a deeper crisis of credibility of the R2P concept” (von Einsiedel & Bosetti 2016, 374).

The fact that the interventions in Kosovo, Iraq and Libya have been detrimental to world order could be said to be common knowledge. However, as Welsh (2011, 7) argues, if the Libya operation could increase research and discussion on how to use force under pillar III of R2P and related questions, it would have contributed to understanding and implementing R2P (see also Badescu & Weiss 2010).

In September 2013, at the 68<sup>th</sup> opening of the UNGA, French President Hollande made a proposal for a “code of conduct” not to use the veto in any mass atrocity situation.<sup>36</sup> In a letter addressed to the Secretary-General dated 14 December 2015, the Permanent Representative of Liechtenstein to the UN annexed (I) a “Code of Conduct regarding Security Council action against genocide, crimes against humanity or war crimes” e.g. reaffirming the commitments of the World Summit Outcome Document, paragraphs 138 and 139, and that the four R2P crimes concern the international community as a whole, are prohibited under customary international law and constitute a threat to international peace and security (S/2015/978, Annex I). There were 107 member states supporting this code of conduct (S/2015/978, Annex II).

Reinold (2014, 291) concludes that the secondary rules of RN2V on R2P have not been changed yet, for there are no common positions on reform of the veto system. However, there is a growing need to demonstrate consistency between UNSC actions and norms of international law. The moral argument in RN2V is indisputable: the UNSC should bear its responsibility. The political argument in RN2V is that if veto is used, it would

35 May 22, 2014 (S/2014/348) would have referred Syria to the ICC; 4 February 2012 (S/2012/77) would have supported the Arab League's decision to facilitate Syrian-led political transition, and 4 October 2011 (S/2011/612) would have condemned the use of force by Syrian authorities (see SCR 2015a, 8)

36 See Global Centre for the Responsibility to Protect (2015) for a summary to collate references made on the RN2V by member states in various UN fora since 2008; see also “Civil society calls for veto restraint by the UN Security Council”, <http://www.globalr2p.org/publication/334> and [http://www.globalr2p.org/our\\_work/un\\_security\\_council\\_code\\_of\\_conduct](http://www.globalr2p.org/our_work/un_security_council_code_of_conduct) for key documents and publications on the veto and RN2V.



undermine the Council's credibility and legitimacy (Evans 2015, 2; see also Erskine 2004.) This discussion also reflects the need for UNSC reform (see e.g. Schaefer 2017).

The UNSC is a political body<sup>37</sup>. A concept paper was circulated to Council members by the US in April 2017, suggesting that human rights would be taken as a new agenda item, "Human rights and international peace and security" (SCR 2017a). The UNSC has never discussed human rights as a thematic issue, "only" in specific situations often reflecting the matter e.g. how mandated peace operations have human rights components. The US concept paper proposed that human rights violations should be seen as the Security Council's primary responsibility for maintaining peace and security, and that addressing human rights violations before they reach even more serious levels can imply there will not be a need for more robust Security Council action, thus strongly stressing preventive action.

China and Russia opposed the idea of putting human rights on the UNSC agenda as a new item. Also, the Non-Aligned Movement (NAM) members of Bolivia, Egypt, Ethiopia, and Senegal, and NAM observer Kazakhstan informed of their opposition to this idea. However, a compromise was reached to have the meeting under the existing agenda item "Maintenance of international peace and security" (SCR 2017a; see also SCR 2016).

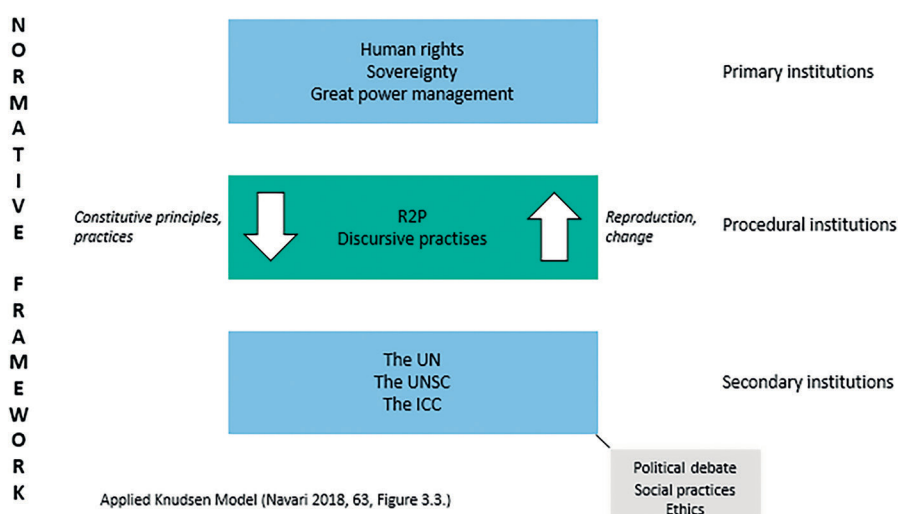
What is mentioned above, can be interpreted as showing how pluralism and solidarity exist at the same time in international society and provides an understanding of change and continuity in international society (see Knudsen 2018; 2018a; Weinert 2011; Friedner Parrat 2017).

As a conclusion for this chapter, the following figure is presented to show the conceptual hierarchy applied in this study. It could be read that R2P as a procedural institution is not only repetitive and regulative but that it may reproduce or change the constitutive principles of primary institutions through political debates in the UNSC.

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<sup>37</sup> 8 July, 2015 Russia vetoed a draft resolution which would have commemorated the anniversary of the Srebrenica genocide.





In this chapter, I have presented the international society approach to international relations, in particular the pluralist and solidarist readings of international society and how R2P can be approached from this perspective. R2P was defined as a procedural institution, with human rights, sovereignty and great power management as its basic principles that are at the same time primary institutions of international society. The secondary institutions – the UN, UNSC and ICC – and the primary institutions are mutually constitutive. It is also suggested that R2P may reproduce or change the constitutive principles of primary institutions through UNSC practices.

### 3 Discursive practices of R2P

In this chapter, R2P is presented as a three-pillar strategy of UN Secretary-General Ban Ki-moon within its normative human protection framework. These three pillars are considered discursive practices of R2P, forming or constructing R2P in their interaction. However, discursive practices do not refer to social practices (see sub-chapter 1.2.1).

Each of these three pillars has its practices, which are considered the UNSC practices of R2P in Chapter 4. These social practices and discursive practices are mutually constitutive.

#### 3.1 Human protection

Secretary-General Ban Ki-moon (UN 2011) defined human protection “as a subset of the concept of human security [it implies] that the security of “we the peoples” matters as much as the security of states”.

“The UN was created to be an agent of change, not just an object of change. [...] The UN has been an incubator of ideas, a builder of norms, and an arbiter of standards. [...] Through its actions, as well as its words, the world body has helped to transform the global agenda embracing human protection as an essential component” (ibid.).

Ban Ki-moon is referring to the Millennium Report, “We the Peoples. The Role of the United Nations in the 21<sup>st</sup> Century” (UNSG 2000), where a new understanding of the concept of security was developed, a more human-centred approach to security was needed, and “we must put people at the centre of everything we [the UN] do” (ibid., 7). The Report continued the discourse on the people-centred or human-centred approach at the UN (see also Chandler’s critique 2001) because “The fact that we cannot protect people everywhere is no reason for doing nothing when we can” (UNSG 2000, 48).

The human protection concept refers to human security both in terms of “freedom from want” and “freedom from fear” (see e.g. Kerr 2010). “Freedom from fear” means freedom from political violence, and “freedom from want” refers to freedom from insecurities of

underdevelopment. As Kerr notes (2010, 117), the “freedom from fear” approach stresses the reduction of violence and casualties in internal conflicts by means of humanitarian interventions (to stop large-scale persecution of civilians), capacity-building, security sector reforms, disarmament, and the establishment of the International Criminal Court (ICC). The “freedom from want” approach follows the UNDP Agenda, especially in its efforts to reduce poverty. The “freedom from fear” approach relates to practices which support human security through R2P. They were first articulated in the ICISS Report (2001), later they were accepted in a bit different form in the World Summit Outcome in 2005 (UNGA 2005) and then developed as a three-pillar strategy in 2009 (UNSG 2009) and subsequently became the three major conceptualisations of R2P (see Luck 2015; also Bellamy 2010; Gallagher & Ralph 2015), which will be discussed in more detail in Sub-chapter 3.3.

As Ban Ki-moon (UN 2011) states, “The international community is morally obliged to consider its duty to act in the service of human protection.” He (ibid.) presented human protection *first*, in the context of serious conflicts and crises, including peacekeeping as a main tool for human protection, peace-building and humanitarian relief. *Secondly*, in the context of prevention, he stated, “the best form of protection is prevention” especially through mediation and preventive diplomacy supporting viable peace processes; and *thirdly*, with regards to humanitarian protection and legal institutions promoting accountability, he stressed the importance of human rights as the essential component of human protection. He placed R2P at the centre of human protection.

Since the end of the Cold War, an International Human Protection Regime (IHPR) has emerged (Bellamy 2016, 113). Bellamy (ibid., 120–125) sees that interrelated sets of norms, rules, practices, and institutional developments have developed as an answer to protect civilians in wars and conflicts, namely: 1) *international humanitarian law* which “established normative standards of civilian protection that not only prohibited attacks on non-combatants and restricted the use of certain weapons but also called for the prevention of atrocity crimes (genocide) and punishment of perpetrators”; 2) *the UNSC adopted a thematic agenda on the protection of civilians in armed conflict*, and this agenda is seen in protection mandates in UN peacekeeping operations; 3) *protecting vulnerable groups* such as refugees, displaced persons, women and children; 4) a *global human rights system* relating to mass violence, meaning peer review activities (such as the Universal Periodic Review at the UN) and human rights investigations informing decision-making within the IHPR; 5) an *international criminal justice system*, specifically in the form of the ICC and series of special and ad hoc tribunals; 6) *humanitarian action and humanitarian aid* which civilians should receive; 7) a *human protection agenda, also at the regional level* – OSCE, EU, AU; and 8) *R2P*. For Bellamy (ibid.), the aim is to show how these different practices or elements hang together and form sources of protection (see also Bellamy & Williams 2009; von Einsiedel & Bosetti 2016).

Bellamy speaks of IHPR, and Knudsen speaks of the international machinery for mass atrocity prevention and protection (Knudsen 2013; 2015; 2016; 2018a). They are not the

same, but point to the same direction. For this study, all mentioned elements are relevant as sources of protection, and as they refer to principles and practices which are important from the point of view of R2P; they can all be considered discursive practices of R2P.

The UN's relevance and credibility is argued to rely on its capacity to end civil wars and mass atrocities. Of special importance in this work is the *UNSC's thematic agenda for the* "protection of civilians" or "civilian protection" binding together peacekeeping, political and humanitarian activities, number two on Bellamy's list (see above). These terms could be used interchangeably, although "protection of civilians" is used in relation to peacekeeping, and "civilian protection" is used more broadly (von Einsiedel & Bosetti 2016, 368). This civilian protection agenda is related to the R2P agenda but still distinct. The R2P principle has developed with the protection of citizens (PoC), and this calls for the question of how they are related (see e.g. Francis & Sampford 2012, 3–8).

The Security Council mandated that sanctions regimes – such as the South Sudan Sanctions Committee established as a result of Resolution 2206 (2015) – are meant to advance civilian protection, preventive diplomacy and mediation, the ICC, and human rights machinery as tools or practices of the UN and the UNSC. However, despite the emphasis on civilian protection, von Einsiedel and Bosetti (2016, 367–370) have criticised the UN, especially the UNSC, for their unfulfilled protection promises; the UN has failed to protect civilians from atrocity crimes (see also Hultman 2013; UNSG 2009, para. 60).

Bellamy and Williams discuss (2011, 825–827) a new politics of protection in connection with the Côte d'Ivoire (see also Lotze 2011) and Libya cases according to Resolution 1973 (2011), by which the UNSC, for the first time, "authorized the use of force for human protection purposes against the wishes of a functioning state" (ibid., 826). This has been named a proper R2P operation, as it fulfilled the aims of the third pillar of R2P, but not without criticism. However, although this, according to Bellamy and Williams, "might reflect a new politics of protection" it is still difficult to know what would be the right to do<sup>1</sup> (see also Adams 2015).

This "new" politics of protection has four characteristics and several problems. According to Bellamy and Williams (2011, 826–827), the first characteristic is that international society has focused on civilian protection; second, that the Council has authorised the use of force by "all necessary means" to protect civilians; third, that cooperation between the UNSC and regional organisations has developed and become more important than earlier, and fourth, the UNSC and regional organisations are the bodies through which member states respond to crises. As an unresolved question, they name "the interpretations of Council resolutions, the relationship between protection and other goals, the relationship between the UNSC and regional organizations and how protection mandates are effectively implemented" (ibid., 826). These issues are continuously under discussion and especially in South Sudan.

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1 See e.g. the special number on Libya, *Ethics & International Affairs* (2011), 25(3).

For this study, the definition of human protection (as a set of practices) outlined by Murithi (2016, 227–228) is apt. He defines it to mean “human protection of civilians from human rights abuses, inside and outside armed conflicts, with a particular focus on mass atrocity crimes”. Correspondingly, R2P crimes can also happen outside of armed conflicts (see Bellamy 2011a).

However, protection can be understood as a much broader concept than that of implementing protection practices (Orford 2011; Sending 2013). It is thought that the sovereign, the state, has the protection capacity, but if a lack of protection is noticed, someone else ought to provide such protection. Who then has the authority to do that? Here, we face the idea that who interprets the situation and decides what to do is important. Who is authorised to speak to whom? As Ole Jacob Sending (2013) states, some humanitarian or human rights groups claim to represent victims *without being accountable*. Advocates of protection (broadly defined) may define the issue/problem in such a way that it mobilises Western actors, as political solutions which are thus legitimised, are not always fit for the purpose. Who has the capacity to offer protection (ibid.)? MacQueen argues (2011, 67–69) that post-cold war peacekeeping – as a protection practice – has become “post-Westphalian” in nature; peace operations have a new function and purpose. Her argument is that they are humanitarian and “political” and “the aim is to strengthen the state and to protect its citizens”. To strengthen the state means to preserve the existing state system (cf. Hehir 2015), and saving this system may sometimes require questioning sovereignty where needed (MacQueen 2011, 69).

R2P is concerned with preventing mass atrocities. The consideration of how protection is justified and it is used to justify different practices entails less ambitious aims than so-called liberal peace-building. As Sending (2013) notes, since R2P is interested in mass atrocity prevention, if states carry out their responsibility to protect their citizens, it assumes they can arrange their internal issues as they please.

### 3.2 Three overlapping agendas at the UN and UNSC

There are three overlapping *agendas* related to human protection, namely conflict prevention, protecting civilians and the responsibility to protect. It could be said that they are related, but they have differences which may contribute to confusion and conflicting norms and practices (see Karlsrud 2016; Welsh 2016).

Conflict prevention is considered the most important aspect of R2P (ICISS 2001, 19). The Convention on the Prevention and Punishment of the Crime of Genocide (1948) and the four Geneva Conventions (1949)<sup>2</sup> are strong instruments in the international community. Kofi Annan’s (UNSG 2001) call for a “Culture of Conflict Prevention” has

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<sup>2</sup> See notes 3 and 4 in Chapter 1, Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva 12 August 1949.

been well received<sup>3</sup>. In the ICISS Report (2001, 3.42), the international community was asked to change its way of thinking from “a culture of reaction” to “a culture of prevention”. Military interventions for human protection purposes have been problematic when used in Somalia, Bosnia or Kosovo, but also when not used as in the case of Rwanda (ICISS 2001, VII). As such, there have been serious problems with international protection (Breakey 2014, 218).

To create such a culture of prevention means, according to Kofi Annan, “setting standards for accountability of member states and contributing to the establishing of prevention practices at the local, national, regional and global levels” (ICISS 2001, 3.42). Constructing such a culture entails a political shift to create this change to happen (Brown 2015, 146).<sup>4</sup>

Conflict prevention as genocide prevention could be the most important task of the UN (see e.g. Lund 2009; Björkdahl 2002), while the prevention of mass atrocities could be one of the UN’s original purposes (see e.g. Bellamy 2008; 2013). Security Council Report (2017, 2) puts this even more clearly: “The UN Charter is clear that conflict prevention is a fundamental responsibility of the Security Council and the UN System.”<sup>5</sup> However, the Charter was drafted to prevent inter-state conflict and not internal conflict. Former UNSG Boutros Boutros-Ghali, in his “Agenda for Peace”, (1992) conceptualised that the UN ought to pay attention to internal conflicts and humanitarian issues. UNSC conflict prevention efforts could be established as firstly, *The Early Post-Cold War Period* (1992–2001): Developing a Comprehensive View of Prevention; secondly, *From 9/11 to the World Summit* (2001–2005): Other Issues Become a Major Focus; thirdly, *The 2005 World Summit: Key Decisions*; and fourthly, 2005–2016: *New Development Regarding Prevention* (SCR 2017, 6–9). During this time period, the UNSG published several reports on conflict prevention (UNSG 2001; 2003; 2008). In his progress report on preventing armed conflict, Annan establishes that the culture of prevention is beginning at the UN, but “an unacceptable gap remains between rhetoric and reality” (UNSG 2006, para. 2, 4). Also, as conflict prevention is a difficult concept, there are different views of the role the UNSC should have in it (SCR 2017, 9). However, conflict prevention is now considered to be an official policy not only in the UN, but also e.g. in the European Union (see e.g. Lund 2009; Sharma & Welsh 2015).

3 The idea of conflict prevention has been presented in the concept of “preventive diplomacy” by Dag Hammarskjöld (1953–1961). Former Secretary-General Javier Pérez de Cuéllar (1982–1991) established the Office for Research and the Collection of Information (ORCI) to provide early-warning, an element in preventive diplomacy by gathering information and doing research. Boutros Boutros-Ghali (1992–1996), in his “An Agenda for Peace” (1992) presented a study on the UN’s capacity for preventive diplomacy, peacemaking and peacekeeping. Kofi Annan (1997–2006) made renewed efforts for conflict prevention in his report “Prevention of Armed Conflict” (UNSG 2001; see Nasu 2009a; also UNSG 2010).

4 See also Carnegie Commission on Preventing Deadly Conflict (1997).

5 In the UN Charter, the key prevention-related articles are Ch.I, Art.1; 1(4); Ch.VI, Art. 33(2); Art. 34; Art. 35(1); Art. 36(1); Art. 36(3); Ch. VII, Art. 40; Ch. VIII, Art. 52(3); Ch. XV, Art. 99 (Security Council Report 2017, 3).

Conflict prevention can be divided and defined in four ways. Firstly is preventing conflicts before they have broken out; every conflict that breaks out, in this sense, is a failure of prevention. Secondly is to prevent the escalation of the conflict that has broken out. Thirdly, conflict prevention consists of actions taken to prevent humanitarian crises. Fourthly is preventing the recurrence of conflict, especially after settlements have been negotiated. Conflict prevention, thus defined, is a comprehensive concept, as it covers the whole conflict cycle (Cousens 2004, 105–108; see also Seppä 2014).

The Council can use many practices to prevent the escalation of armed conflict, namely agenda-setting, fact-finding missions, diplomatic initiatives, sanctions, peace operations, and peace enforcement (Cousens 2004; see also Romita 2011). However, some things can prevent effective prevention: different ideas of state sovereignty, different political interests (especially those of powerful states), the veto practice, and the Council's different conflict management responsibilities (SCR 2017, 4–6). The Council could be said to be in a catch-22 situation; greater concentration on conflict prevention could help its peace operations and relieve the burden of conflict management, but it is difficult for the Council to concentrate on conflict prevention because it is overwhelmed with different conflict management obligations (*ibid.*, 5).

Welsh (2016, 221–227) categorises the challenges to mass atrocity prevention into conceptual gaps, political barriers and institutional barriers. Welsh states that so far little is known about what works for preventing mass atrocities; therein comes the question and problem of overlapping agendas, about how mass atrocity prevention ought to be understood.

### 3.2.1 Conflict prevention and mass atrocity prevention

It has been mentioned that mass atrocity prevention is the most important aspect of R2P and that R2P is a doctrine of prevention (see also Rosenberg 2009). However, there has not been as much discussion about this aspect of R2P. As Sharma and Welsh (2015, 6–7) argue, when the discussion has concerned the preventive aspect of R2P, it has usually been discussed “through the lens of conflict prevention”. Although there has been considerable activity around the prevention of conflict (see above), there has been less activity on the prevention of the four R2P crimes, with an exception being research on genocide. This has produced “a conceptual confusion” over what the preventive dimension of R2P means (Welsh & Sharma 2012, 4). Welsh (2016, 223) sees this as one reason for existing knowledge gaps.

Prevention of armed conflict does not guarantee prevention of atrocity crimes (Sharma & Welsh 2015, 7–8; see also Bellamy 2011; Welsh 2016; Woocher 2012; UNSG 2013, para. 12–29). However, preventive action covers a range of different activities. According to Bellamy and McLoughlin (2009, 3), “Prevention should be sophisticated, choosing the right tools, suitable actors and combining long-term measures designated to reduce the risk



of genocide and mass atrocities with measures to prevent their imminent commission.” The ICISS Report (2001) and Kofi Annan wanted to stress that preventing mass atrocities would mean focusing on conflict prevention, unlike Ban Ki-moon, (UNSG 2009), who stressed that mass atrocity prevention especially should focus on mass atrocity prevention – them as thus different things. This could be interpreted to have happened for political reasons (Woocher 2012, 27). It was “easier” to speak of conflicts than mass atrocities, less sensitive to speak of conflict prevention than mass atrocity prevention. However, the UNSC was able to discuss the mass atrocities committed in South Sudan openly (see Chapter 4), so there has been a change in this respect in the 10–15 years since the time of the ICISS Report.

The “narrow but deep” approach mentioned in the Report of the Secretary-General (2009) is, however, facing difficulties. Preventive efforts cannot be framed exactly for the prevention of these four crimes – genocide, crimes against humanity, war crimes, ethnic cleansing – specifically, especially when the same practices are used for conflict prevention in general. Preventive tools are deployed before mass atrocities happen. Any mention of these four crimes, referred to as a “R2P case”, is difficult and politically delicate, even if the case is a clear-cut, as is the situation in South Sudan. There is no specific preventive approach in R2P, results overlap between these two doctrines (Cuyckens & Man 2012, 120). This is why the “narrow but deep” approach is not possible. This conceptual confusion threatens to further compromise the operationalisation of conflict prevention and the preventive aspect of R2P (*ibid.*; cf. Woocher 2012). There is a dilemma of comprehensiveness in conflict prevention, and, as Bellamy (2009, 98–99) notes, there is huge range of different policies and of political and economic commitments, while there is also no agreement on what advancing R2P through the prevention of atrocities would signify. However, conflict prevention and mass atrocity prevention are not synonymous, yet they are related (Hehir 2015).

There is still one more important difference between armed conflict and mass atrocity crimes prevention. While armed conflicts are regulated by international law, mass atrocity crimes are defined as crimes. This dimension has not been articulated well; it is a delicate and politically very sensitive issue but still an integral part of R2P. When conflict prevention has tried to be “a political solution” – avoiding violence and using force, the prevention of mass atrocities may require the use of force (Sharma & Welsh 2015, 9). As Nasu (2009, 217) has remarked, the problem in mass atrocity prevention is that it is at the early stage of conflict, and more robust action may be needed. The understanding is, however, that consent is needed from all parties involved at this stage of the conflict. Nasu is referring to this conceptual dilemma in R2P, as the UNSC has now established that only political solutions are possible, e.g. both in Syria and South Sudan. The International Criminal

Court (ICC) has potential roles<sup>6</sup> for R2P and crimes prevention in general (see Saxon 2015; Rosenberg 2009; also sub-chapter 2.2.2.2.2).

### 3.2.2 Protection of civilians (PoC) and R2P

The development of R2P could also be discussed within the framework of the protection of civilians (PoC) as a thematic issue of the UNSC. This discussion provides an important context for the construction of R2P since they both have a common interest in human protection. At first, the UNSC would address PoC in its country-specific decisions but later needed conceptual clarification. This was reflected for the first time in the 1998 Report of the Secretary-General on the causes of conflict in Africa (UNSG 1998). PoC is the “framework for the UN’s diplomatic, legal, humanitarian and human rights activities directed at the protection of populations during armed conflict” (ICRP 2011). Despite the fact that PoC and R2P share the same aim (protection of civilians) and share the same normative foundation (human rights, humanitarian law), there is a clear distinction between them. PoC goes beyond R2P, which focuses on the four crimes mentioned above, mass atrocities, but R2P is not limited to mass atrocities occurring in armed conflicts (GCRP 2011). Mass atrocities can also happen in times of peace, that is, outside armed conflict, although there is a strong link between them (see Bellamy 2011a). PoC is concerned with protecting civilians, but only in armed conflicts (see e.g. Poli 2012; Breakey et al. 2012).

However, despite these differences, PoC and R2P are related (see e.g. Shesterinina 2016), and they can be interpreted as mutually reinforcing (cf. Tardy 2012) in the sense that they are expressions of a culture of protection. Some have thought that R2P has been harmful to the idea of PoC for being a political concept and thus “contaminous” (Poli 2012, 77–78, 72). As Popovski (2011) has argued, R2P and PoC are “siblings, but not twins”. R2P has also been called an “apolitical” concept (Brown 2013). The opportunity to call a concept “too political” and “apolitical” at the same time is only possible when a concept is political.

Since 1999, the UNSC has mentioned “the protection of civilians” in peacekeeping mandates, making explicit what was already expected by peacekeepers (as an implicit goal), producing a new “mandate language” and making it a standard in such missions. The UN Sierra Leone Mission (UNAMSIL) in October 1999, according to the UNSC resolution 1270, was the first mission where the phrase “to afford protection to civilians under imminent threat of physical violence” appeared. Since UNAMSIL, the UNSC has addressed the protection of civilians as either a mission’s main goal or one of its objectives (see Holt & Berkman 2006; Holt, Taylor & Kelly 2009, 35–51), reflecting the general reinforcing trend of human security.

Kofi Annan (UNSG 1998) named “protecting civilians in situations of conflict” (para. 49–52), “addressing refugee security issues” (para. 53–55), “mitigating the social

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6 Roles for the ICC, see Roundtable: The Political Ethics of the International Criminal Court, Ethics & International Affairs, 26(1), 2012.

and environmental impact of refugee on host countries” (para. 56) and “humanitarian coordination” (para. 57) as humanitarian imperatives. The first landmark report on the theme, “Report of the Secretary-General to the Security Council on the Protection of Civilians in Armed Conflict” (UNSG 1999), was issued in September 1999 with 40 recommendations.

The first resolution was 1265 (1999), in which the UNSC urged

all parties concerned to comply strictly with their obligations under international humanitarian, human rights law and refugee law, in particular these contained in the Hague Conventions of 1899 and 1907 and in the Geneva Conventions of 1949 and their Additional Protocols of 1977, as well as with the decisions of the Security Council [and emphasized] the responsibility of states to end impunity and to prosecute those responsible for genocide, crimes against humanity and serious violations of international humanitarian law.

The resolution also stressed conflict prevention and cooperation with regional and other organisations. UNSC meetings on PoC have established a shared understanding that protection from mass violence is a matter of international peace and security and belongs to the UNSC mandate (SCR 2012, 4; Bellamy 2016, 121–122; Holt & Berkman 2006, 1–33; Holt, Talyor & Kelly, 2009, 52–62). If civilian attacks would mean threats to international peace and security, it would mean that PoC belongs under Article 24 of the Charter (Breakey 2012a, 51).

Since that time, the Security Council has had the protection of civilians on its agenda. It has adopted three thematic resolutions – 1296 (2000), 1674 (2006) and 1894 (2009) – and reaffirmed its earlier commitments. Resolution 1631 (2005) reaffirmed its cooperation with regional and subregional organisations. The Security Council had established a practice to hold biannual open debates on the protection of civilians (SCR 2012, 3–4; also SCR 2008).<sup>7</sup>

Resolutions 1265 and 1296 signified a starting point and the development of the UNSC practice that human suffering is a threat to international peace and security. As Wellens (2003, 56) argues – referring to Österdahl (1998, 45) – “what the Security Council determines to constitute a threat to the peace is by definition (temporarily) not or no longer within the exclusive domestic jurisdiction of any one sovereign state” (see also Lillich 1994; Le Mon & Taylor 2004).

Rules of international humanitarian, human rights and refugee laws form the base for the concept of PoC. While there are many interpretations of the concept, the main idea is simple: to protect individuals in times of war and armed conflict and to protect the basic rights of non-combatants, and to prevent violence threatening them. Hunt (2009, 7) has suggested that PoC should be understood broadly “as the full range of activities that

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<sup>7</sup> See Security Council Report, <http://www.securitycouncilreport.org/protection-of-civilians/> for a full history and key documents on *Protection of Civilians* in the framework of the UNSC.

intergovernmental organizations, countries, international and local NGOs and individuals can pursue to advance the legal and physical protection of civilians.”

Breakey (2012a) distinguished four types of PoC depending on the different perspectives, resources and powers of separate PoC *actors*. Breakey separates *Combatant PoC* (the only one which is unquestionably a norm based international humanitarian law (IHL)), *Peacekeeping PoC*, *Security Council PoC*, and *Humanitarian PoC*. There is interaction between these principles and operational overlap as the UNSC may decide to undertake a protective mission tied to peacekeeping PoC and Combatant PoC and Humanitarian PoC. As there is operational overlap, they also share “a common conceptual scope”. It is a matter of protecting civilians from large-scale violence (Breakey 2012a, 41).

By Security Council PoC, Breakey (2012a, 50–54) refers to the UNSG’s reports on protecting civilians and the UNSC resolutions mentioned earlier. This means the use of “diplomatic pressures, sanctions, accountability, monitoring and [...] military force in order to protect civilians from widespread, systematic and human-inflicted suffering” (ibid., 51). Breakey suggests (ibid.) that the UNSC PoC could include R2P when thinking its relationship to PoC is broader than R2P. Yet R2P also extends to situations other than armed conflicts – meaning PoC would function as a framework for R2P. It could also be thought the other way around – that R2P is a framework for PoC (see Hunt & Bellamy 2010, 8). Breakey (2012b, 62–81) suggests conceptualising these four PoC concepts by analogy to the three pillars of the R2P; there are four PoC concepts and three R2P pillars, so altogether seven principles under consideration.

The SGs have framed the contents of the UNSC PoC broadly (Breakey 2012a, 51–53), and it has many practices at its disposal to respond to large-scale-violations against civilians: prevention, peace-making, peacekeeping, and peace-building under Chapters VI and VII of the Charter. The Security Council can use sanctions, arms embargoes, separation of civilians and combatants, ensuring access to humanitarian aid, establishing safe zones, monitoring, reporting, protection of refugees, and countering hate media. Preventive measures may include conflict resolution, military and civilian deployment and fact-finding measures. The UNSC has the *responsibility* to maintain international peace and security, but its use of language concerning the PoC agenda is cautious. The UNSC uses terms like “concern”, “willingness”, and “intentions” rather than “responsibility” or “obligation”, and mentions “proceeding on a case-by case basis” (Bassiouni 2009, cit. in Breakey 2012a, 53; see also Holt, Taylor & Kelly 2009).

Hunt and Bellamy (2010, 8) state that R2P is a political framework for realising PoC. It would be important to see “which PoC strategies or policies contribute to preventing escalation to genocide or mass atrocities, or constitute an effective response to their commission and how the political commitment of R2P can add values to PoC.” They also argue (ibid., 9–11) that the failures of peacekeeping in the 1990s are failures of protection. In this connection, state-building strategy as a conflict prevention strategy did not prevent mass atrocities from happening in South Sudan.

A great deal of confusion has been caused by differences and similarities in R2P and PoC (see e.g. Welsh 2011; Breakey 2012b; Francis & Popovski 2012; Sampford 2012; Nasu 2012; Garwood & Gowers 2012).<sup>8</sup> R2P concerns only the four R2P crimes and is thus “narrower” but also “deeper” (UNSG 2009, 10c) as mentioned, meaning there could be different responses for prevention and protection. Breakey (2012a,b,c) suggests discussing seven different protection principles. Both PoC and R2P share their basis in human rights, but their differing parts have similarities throughout these seven concepts. However, different normative principles mean different protection practices. According to Breakey (2012b, 66–67), e.g. direct violations of rights could be prohibited, third parties can do that or that social institutions are to be built to indirectly to protect rights.

Since civilian protection can mean different things depending on actors, Holt and Berkman (2006, 35–56) provide six definitions of civilian protection (cf. Breakey 2012a; Breakey et al. 2012, xii–xiii) and categorise them in three, namely (1) civilian protection in traditional military thinking, (2) humanitarian thinking and (3) peace operations and military interventions. The third category refers to the UN peacekeeping concept where civilian protection forms a part of the larger mission concept or a set of tasks within a mission (Breakey’s Peacekeeping PoC). Some mandates directly pertain to “protecting civilians under imminent threat”, meaning civilian protection is one of the many potential aims within the mission of Chapter VII, and there are other aims. This reflects the way most UN missions with complex mandates operate. Peacekeeping tasks which broadly protect civilians are many; among them, Holt and Berkman (2006, 4) mention e.g. providing support for law and order, escorting convoys, protecting camps, establishing safe havens, breaking up militias, demilitarising refugee/internally displaced people (IDP) camps, organising disarmament, and intervening on behalf of an individual or community under threat. In peacekeeping mandates, a new mandate language has developed and become standard in these PoC missions (Holt & Berkman 2006, 4–5).

Normative debates can be seen in Security Council peacekeeping mandates. Thematic tasks such as women, peace and security (resolution 1325/2000), children and armed conflict (1612/2005) and the aforementioned protection of civilians in armed conflict (1674/2006) are regularly mentioned in mandates (UN 2008). They construct mandates differently than before and they have different consequences as they address and construct the problems differently (see Bellamy & Williams 2011a, 8). The legal basis for peacekeeping operations comes from Chapters VI, VII and VIII of the Charter, the normative framework of the Charter, international human rights law, international humanitarian law, and Security Council mandates (UN 2008).

Holt and Berkman (2006, 42) define “protecting civilians through military intervention to prevent mass killings” as a proper R2P concept, as protection of civilians is the primary

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8 For an excellent presentation of the origins, normative framework, differences and similarities between PoC and R2P, institutional structures and implementations, see Hugh Breakey et al. (2012), *Enhancing Protection Capacity: A Policy Guide to the Responsibility to Protect and the Protection of Civilians in Armed Conflict*. Institute for Ethics, Governance and Law.

goal, and the main purpose is to stop or prevent mass killings. This is most obviously a non-consensual operation. As ICISS (2001, 7.1.) report states,

Military interventions for human protection purposes have a different objective than both traditional war-fighting and traditional peacekeeping operations. [...] Because the objective of military intervention is to protect populations and not to defeat or destroy an enemy militarily, it differs from traditional war-fighting. [...] Regime change is not the aim of this kind of intervention but protection of civilians.

However, peace operations under Chapter VII mandating missions to use “all necessary means (to) protect civilians under imminent threat of physical violence” with host government *consent* are R2P operations. Pillar II encompasses two types of consent-based military activities, namely preventive peacekeeping deployment (e.g. in the former Yugoslav Republic of Macedonia and Burundi) and military assistance (Sierra Leone) (Luck 2010, 117; UNSG 2009, para. 40–41; Hunt 2013). Although discussion related to pillar III of R2P has received the attention because of the possibility of using force, many non-coercive tools are available. As Luck (2010, 117) states, “the third pillar of the strategy seeks to make the fullest possible use of the wide range of tools, procedures, and arrangements described in Chapters VI, VII and VIII of the Charter.” The UN does not wage war, enforcement action is done by a coalition of the willing with the authorisation of the UN.

R2P actors (Breakey et al. 2012, xi, xxi) – i.e. states, the international community, the UNSC, regional organisations, the UNSG, and the UN Secretariat – use different practices of protection according to their possibilities. However, the shared objective of all R2P actors (see *ibid.*, xii–xiii) is to protect populations. This refers to *all people* of a nation, region or other larger group suffering from grave human rights violations. Also, because R2P crimes can happen in times of peace, the term “population” is more apt than “civilian”. PoC is concerned with *civilians in armed conflict* in smaller-scale attacks against individuals, and R2P is concerned with mass atrocity prevention. Effective protection of civilians in armed conflicts can also help protect them from the risks of atrocities (see also Bellamy 2011a).

There have been estimates of how R2P might negatively affect the existing PoC agenda (see also Tardy 2012), but there is no reason to “overestimate the extent to which RtoP represents a radical departure from past practice or expansion of existing commitments” (Hunt & Bellamy 2010, 11).

### 3.2.2.1 *Who is a civilian and why civilians should be protected*

As discussed earlier, while R2P relates to populations, PoC relates to individual civilians. Protecting civilians in armed conflicts has its base in IHL. A civilian is a person “who is not a member of State armed forces or organised armed groups of a party to the conflict, and who is not taking a direct part in hostilities” (see Breakey et al. 2012, xi). The term “civilian”



was used just after the First World War – before that the terms “unarmed inhabitants” or “non-combatants” were used. Civilians are not members of any armed group; civilians are in this way harmless. They are unarmed men, women, children, the elderly (Slim 2007, 183). IHL defines a civilian population to mean “all persons who are civilians”, and if there is “a doubt whether a person is a civilian, that person shall be considered to be a civilian” (IHRC 1949).

However, being a civilian and being a soldier can be a complicated thing. According to Geneva Conventions (1949), civilians may lose their protection as civilians if they participate in hostilities. This is associated with the idea of civilian non-innocence and relates to certain ambiguities namely their economic roles, social relationships and military and political roles (Slim 2007, 183–211).

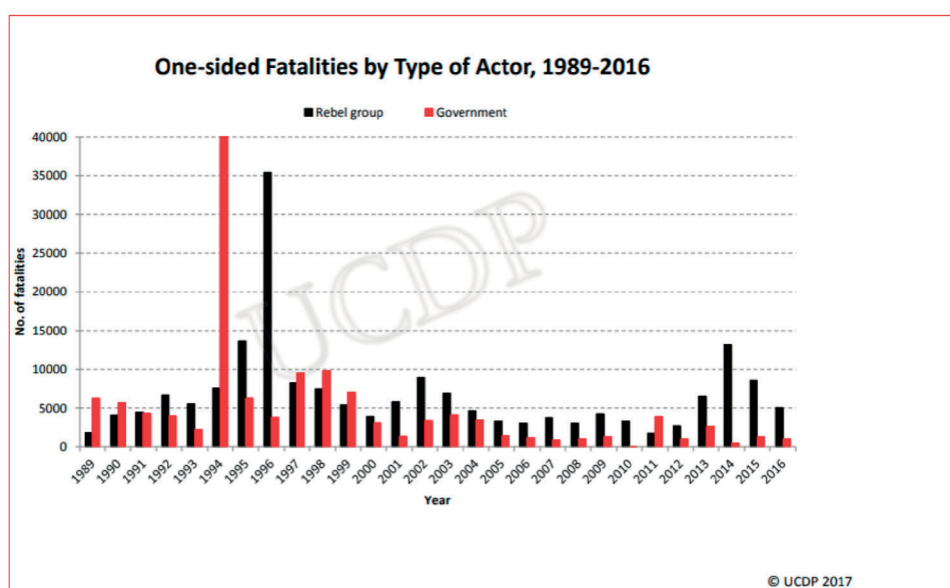
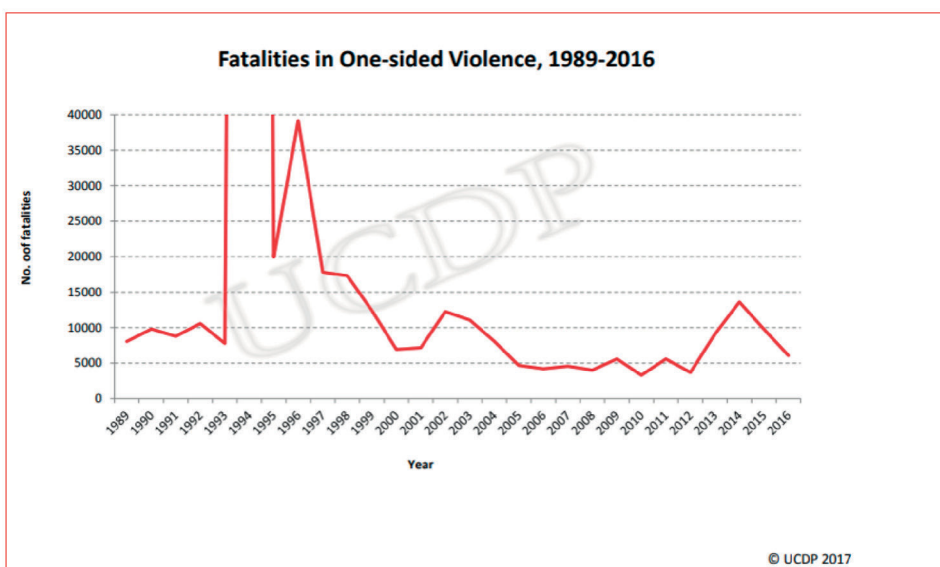
Slim (2003, 482) notes that the UN civilian protection relate to international humanitarian law setting clear standards for civilian protection at the UN.<sup>9</sup> Peacekeeping operations are the most important of the UN activities and thus missions’ successes and failures to protect civilians have consequences for the UNSC and the UN as a whole. Political peace cannot be achieved without addressing civilian insecurity; thus, the protection of civilians is crucial when trying to achieve sustainable political peace (Holt, Taylor & Kelly 2009, 22–24). The end of the Cold War entailed an increase in the number of UN peace operations (UN 2017), but in recent years, the number has decreased. This could be interpreted as a willingness to intervene, showing responsibility. There have been some successes in ending violence, and many serious failures. The most important question has come down to *how to intervene*. There have also been so-called protracted conflicts where violence has started again, after second-tour peace operations which can maintain the prevailing situation, but it does not make the situation any better for people (see Woodward 2007).

However, there is a huge amount of civilian deaths in conflicts, and these are widely seen as unacceptable. One-sided violence means “the use of armed force by the government of a state or by a formally organised group against civilians which result in at least 25 deaths a year” (UCDP 2017; see also Human Security Report 2012, 198–209).

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9 Article 50 of Additional Protocol to the Geneva Conventions of 12 August 1949: Definition of civilians and civilian population 1. A civilian is any person who does not belong to one of the categories of persons referred to in Article 4 A 1), 2), 3) and 6) of the Third Convention and in Article 43 of this Protocol. In case of doubt whether a person is a civilian, that person shall be considered to be a civilian. 2. The civilian population comprises all persons who are civilians. 3. The presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character. (ICRC 1949.)





Graphics: Allansson et al. 2017.

As seen from the Uppsala Conflict Data Program (UCDP) graphics (Allansson et al. 2017), the total number of casualties has decreased (see also Pinker 2011). However, Melander (2015, 9) noted that all forms of organised violence (state-based conflict, non-state conflict and one-sided violence) are on the increase from earlier lower levels. In this study, I do not discuss whether the absolute number of civil wars and casualties have declined or not, or whether it is a matter of different methodological choices affecting the research (see e.g. Newman 2009). I take mass atrocities to be, according to the Rome Statute Preamble

(1998), “the most serious crimes of concern to the international community”, and any of them is too much. Either of these issues, serious crimes and conflicts and related problems, and the overall decline of violence should not be ignored (Melander 2015, 9).

There are three reasons civilians should be protected in war: moral arguments, arguments of prudence and arguments of self-interest. Perhaps moral arguments have proved to be the most difficult to make (Slim 2003, 482–483). Slim (*ibid.*) uses Martin Wight’s (1991) classifications of three R’s – realists, rationalists and revolutionists to show how realists and revolutionists reject the moral idea of the (innocent) civilian, but how rationalists (international society) embrace the idea but find it difficult to keep in practice.

“Civilian” distinguishes between combatants and non-combatants in war. Civilian suffering is an important ethical and political issue, but the concept of a civilian in war is neither simple nor unanimous (Slim 2007, 3). Since there is massive violence against civilian populations today (see UCDP graphics), Slim (*ibid.*) explains that many warring parties do not “find civilians particularly innocent or they decide that, innocent or not, killing them is useful, necessary or inevitable in their wars”. Nonetheless, civilian status is a moral and legal identity which should be respected.

The idea that there are civilians in war is “a moral idea of mercy and restraint” (Slim 2007, 11). This relates to the idea of limited war. The principle of limited war has proportionality: force should be used only to that extent needed to achieve the military objectives, not to destroy life and property disproportionality. The ICISS Report (2001, 4.15–4.23) recommended “right authority, just cause, right intention, last resort, proportional means and reasonable prospects” but they were not accepted in the negotiations of the World Summit Outcome Document (Bellamy 2009, 83–91). However, the Hague Laws, the Genocide Convention, the International Criminal Courts, the Geneva Conventions, and their Additional Protocols provide extensive legal protection for civilians in both international and civil wars. This protection is complemented with international human rights treaties (Slim 2007, 20).

Despite its sustainability, the Geneva tradition, the limited war, has also been critiqued, it has never dominated the practice of war. This is the “limitless war” idea. In this philosophy of war, there is a total disregard for the entire enemy population. Civilians are not killed mindlessly; there are reasons for that. People who kill civilians have become convinced of the justification of these reasons, and thus they obey orders when doing the killing. Political leaders have decided that killing civilians is the most appropriate way to achieve their aim and solve their problems. This also relates to the ambiguity of civilian identity, and this ambiguity is essential when killing innocent civilians (Slim 2007, 23–30, 121, 179). However, it is not easy to kill another human, “how to do the killing”. The enemy has to be de-humanised. There is a well-known story of Saddam Hussein, the “Doctor No” of the Middle East as Harle (2000, 100) argues. His wickedness justified his killing, and he was a perfect enemy for the Coalition in the Iraq war. Saddam Hussein most probably was not a saint, but this de-humanisation deprived him of his humanity (Harle 2000, 100–102). If

the authorities say that the enemies are insects, rats, worms, louses, or cockroaches (Pinker 2011, 325–327), people know what to do with them. People need “practice, repetition, contagion, hurt and hatred, denial” to kill others (see Slim 2007, 213–250; see also Bellamy 2015, 29–37).

J. Leader Maynard (2015, 225) discusses, as did Slim, the need to understand atrocity crimes, especially atrocity perpetrators, and argues that “atrocities are made possible in part through the propagation of sophisticated and varied justificatory mechanisms which profoundly shape how perpetrators perceive their victims and themselves”. He (2015, 195) outlines six mechanisms which provide a framework for how to understand mass atrocities: 1. dehumanisation; 2. guilt-attribution; 3. threat-construction; 4. deagentification; 5. virtue-talk; 6. future-bias. The first three are victim characterisations, and the second three perpetrator characterisations. Maynard emphasises that not all six mechanisms are necessary conditions for mass atrocities; they can occur without all six being present, but an ideology of some kind is needed. Human Rights Watch (2015, 4) has documented that in April and May 2015 in South Sudan,

approximately 60 unlawful killings of civilian women, men and children, including the elderly, some by hanging, others by shooting or being burned alive. Some killings took place in towns and villages but fighters from the militia of the Bul Nuer ethnic group (Bul fighters), operating alongside government forces, also shot at civilians they chased into forests and swamps [...] attacks deliberately targeting civilians, murder, and rape constitute war crimes and acts like murder and rape may also amount to crimes against humanity.

Civilians should be protected from being killed, raped, tortured, starved or burnt. Civilian ethics deals with the contexts. Since there are competing moralities in war, the philosophy of limited war is not an absolute ethic. It means that *civilians should be protected as much as possible*. Limited war thus accepts war but tries to restrict how it is fought. The Geneva tradition mitigates war; international law makes war legitimate, but the use of force is made legitimate only by the authorisation of the UNSC. The limited war philosophy has a mixed view of human nature (Slim 2007, 19–31). It could be further stated that “the civilian ethic must be carried into war [...] it is usually there already, and it needs support” (Slim 2007, 33).

The Geneva tradition reflects the idea of a solidarist conception international society in the sense that there is a possibility for collective use of force for human protection purposes (see also Knudsen 1999, 62; 2015, 14; cf. Chandler 2004). To commit mass atrocities means to not treat people as *humans*. This is against the values of humanity, thus creating or constructing a moral responsibility for members of the international community (Welsh 2012, 105).

It can be argued that PoC and R2P can coexist and be mutually beneficial, as the interaction between them means a huge conceptual development with practical value (cf.

Tardy 2012). However, they are often confused, misused and misunderstood (Popovski 2012, 276–277; see also Evans 2007).

### 3.3 Conceptualisation of R2P

#### 3.3.1 The normative framework for R2P

Breakey et al. (2012, 26–44; see also Schabas 2006, 7–8) list the UN Charter, the 1948 Genocide Convention, International Humanitarian Law, the 1949 Geneva Conventions and 1977 Additional Protocols, 1951 Convention relating to the Status of Refugees, international human rights law, 1998 Rome Statute of the International Criminal Court, 2005 World Summit Document, paragraphs 138–140, UN Security Council resolutions, and UNGA resolutions as the normative framework for R2P.

The documents mentioned above could also be said to provide the normative justifications for R2P in terms of its appeal to universal human rights. The World Summit Outcome Document (WSOD) placed R2P under its “human rights” rubric, indicating this connection, but at the same time, its hesitation (Welsh 2007). The other normative justification for R2P is *human security*, in its prioritising the security of people over states, in putting people first. The third normative justification for R2P is the idea of *sovereignty as responsibility* (Breakey 2012, 20; for a critique see Brown 2013; also Chandler 2001; 2009; 2010). Mikulaschek (2010, 22) estimates how R2P’s value is its function as “an organizing principle that ties different normative strands together”.

Orford (2011, 42) argues that “the responsibility to protect concept offers a coherent framework for understanding practices of international executive rule”. Since the time of former UNSG Hammarskjöld, UN peace and humanitarian operations have been based on “the principles of neutrality, impartiality and independence.” After the Cold War, these principles, especially neutrality and impartiality, have proven to be problematic as peace operations have become more complicated and challenging due to the changing nature of war. R2P further develops the culture of international rule that has developed since Hammarskjöld, but it also deviates from this tradition as it tries to develop a framework in which future international action could be taken and existing practices get new meaning (Orford 2011, 43–44). Johnstone (in Karlsrud 2013, 19) has argued, echoing Orford, that practices can take place before normative and law-making undertakings which are formulated within international organisations.

According to constructivism, the UNSG can function as a “norm entrepreneur”<sup>10</sup>, in that he can have a political role that contributes to the emergence of norms (Madokoro 2015, 35–38). The UNSG has “the power of persuasion based on law” (Johnstone 2003),

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<sup>10</sup> About the role, authority and legitimacy of the UNSG, see e.g. Karlsrud (2013), Madokoro (2015), especially notes 13 and 14.

and as his political and legal roles are related and he can make use in his work the “values and principles of the UN Charter”. This can make his position strong (*ibid.*). The SG has a political purpose and responsibilities, according to Article 99 of the UN Charter: “The Secretary-General may bring to the attention of the Security-Council any matter which in his opinion may threaten the maintenance of international peace and security.” The UN, Orford (2011, 10–13) remarks, was the first international organisation to provide its head with such power. Also, the SG must tell the Security Council and the General Assembly “what it needs to know, not what it wants to hear. The Secretary-General must be the spokesperson for the vulnerable and the threatened when their Governments become their persecutors instead of their protectors” (UNSG 2009, para. 61). However, when developing new norms, the SG has to balance between being ambitious but considering thoughts of member states (Karlsrud 2013, 19–20).

The idea of responsibility to protect was given in Kofi Annan’s “Ditchley Foundation Lecture” in June 1998 (Annan 1999, 13) when he took intervention as the main theme of his speech.

So when we call tragic events such as those of Bosnia and Rwanda and ask ‘Why did no one intervene?’ [...] The Charter protects the sovereignty of peoples. It was never meant as a licence for governments to trample on human rights and human dignity. Sovereignty implies responsibility, not just power.

Kofi Annan gave his report on Srebrenica (UNSG 1999a) and his report on Rwanda (UN 1999). He further took up his views in his article in the *Economist* “Two Concepts of Sovereignty”, (Annan 1999a, 38–39). There he discussed how the international community is not able to reconcile two equally important interest: the case of Kosovo and the dilemma of humanitarian intervention. This is, according to Kofi Annan, the core challenge for the UNSC and the UN as whole in the years to come.

The government of Canada responded to Annan’s questions about humanitarian intervention, with the ICISS Report (2001). Annan stated that the whole report was important to the credibility of the international community and its ability to prevent large-scale loss of civilian life (UNSG 2002; see also Chandler 2004). Kofi Annan, as a norm entrepreneur, promoted the normative concept of R2P (Annan 1999) as his successor, Ban Ki-moon, also did (see e.g. SG/SM/11701; UNSG 2009; see also Chandler 2009; 2010).

Annan echoed or adopted the idea of “sovereignty as responsibility” presented by Francis Deng<sup>11</sup> (Deng et al. 1996; Deng & Cohen 2016) in relation to IDP’s as they had not had the same rights as refugees under international law. SG Boutros-Ghali had appointed

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<sup>11</sup> Francis Deng served as the UN Secretary-General’s Special Representative on Internally Displaced Persons (IDP) 1992–2004 and later Secretary-General’s Special Advisor on the Prevention of Genocide 2007–2012 in the Office on Genocide Prevention and Responsibility to Protect. First Special Advisor on the Prevention of Genocide was appointed in 2004 and first Special Advisor on the Responsibility to Protect in 2008. For their role Luck 2016; UN 2014. They report directly to the UN Secretary-General, see <http://www.un.org/en/genocideprevention/index.html>.

Deng as his Special Representative on IDPs, as there was a growing humanitarian need and new political problems – internal conflicts instead of inter-state conflicts (Bellamy 2009, 21–22).

How sovereignty and human rights are related was defined so the host state has the primary responsibility for protecting and assisting IDPs. They argue further that when a state is not able to do this, international assistance should help the state realise its national sovereignty (Deng et al. 1996; also Smit 2013, 18–19; Acharya 2013, 472–474; Orford 2011, 13–16). With this definition of sovereignty comes accountability (Bellamy 2009, 23; UNSG 2009, para. 7).

Therefore, it could be argued that R2P also has non-Western roots, as its main idea, sovereignty as a responsibility, was developed in Africa, in relation to IDPs (see Breakey et al. 2012). The African and non-Western linkage was further strengthened by the ICISS Commission's chair, Mohamed Sahnoun, who did important work in this area. The African Union Constitutive Act is the first to embody R2P into its founding document: Article 4(h) (2000), which provides “the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity”. Acharya (2013, 474–476) argues that the contributions and roles of Deng, Annan and Sahnoun, as well as the failures in Rwanda and Somalia, helped changed African leaders' view on sovereignty before the ICISS Commission was established and stressed R2P's regional context. The AU stress non-indifference in these situations, which is different than non-interference (see Pergantis 2014; Mwanasali 2010; Geldenhuys 2014; Bellamy 2011, 13–15). Luck (2009, 21) argues that it would be good to rethink some states have a narrower definition of sovereignty while others accept the broader definition. Sovereignty unites them all in their approach to R2P, “just in different ways”.

R2P is a delicate concept, as has been mentioned and noticed. Great powers such as the United States, China and Russia were reluctant to discuss the ICISS report. “The High-Level Panel on Threats, Challenges and Change” (UNSG 2004) was the second opportunity to provide an intellectual foundation about human protection. The Panel published its report “A More Secure World: Our Shared Responsibility” (UNSG 2004) in 2004. The report established the principle of R2P by recognising the connection between sovereignty and responsibility, which the developing collective security system needed to consider. The values of “dignity, justice, worth and safety” of all states' citizens should be the main concern of any collective security system (UNSG 2004, para. 29–30). As Ban Ki-moon states in his report (UNSG 2009, para. 9; also Madokoro 2015, 42–46) many ICISS recommendations were taken in the conclusions of the panel's recommendations and in Kofi Annan's next Report “In larger freedom: towards development, security and human rights for all” (UNSG 2005; especially part IV: Freedom to live in dignity). These reports were the material for the WSOD (UNGA 2005; see also Niemelä 2008, 11–12; Smit 2013, 32–33). Madokoro (2015, 46) argues that Kofi Annan set up “R2P as a UN agenda under the



emerging normative environment of civilian protection”. PoC and R2P thus developed in parallel, in a way helping each other in respective normative development. PoC framework was the only framework in which R2P could be discussed.

R2P was adopted at the World Summit in 2005 as a follow-up to the outcome of the Millennium Summit. As Luck (2010, 114–116) notes, the ICISS presented the important principles of R2P but did not discuss a legal or political document. The World Summit did that. Mentioned differences were that firstly, R2P has to be narrow – four crimes – but deep in the sense that different tools or practices of the UN system can be used for the prevention of and protection from these crimes. Secondly, there needs to be a possibility for coercive action, but it is put within the context of the UN Charter. Thirdly, there was a difference in how policy measures need to be described; the ICISS report described them in more functional terms (to prevent, react, rebuild) not in terms of actor – i.e. who would be responsible for what – as the 2005 Outcome Document did. The World Summit adopted principle meant that it was now advocated by all the UN Member States (Bellamy 2009, 91–95; see also Orford 2011).

### 3.3.2 R2P as a three-pillar strategy – practices of prevention, protection and enforcement

In April 2006, the UNSC adopted thematic resolution 1674 on the Protection of Civilians in Armed Conflict where it “Reaffirms the provisions of paragraphs 138 and 139 of the 2005 World Summit Outcome Document regarding the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity”. It took one year to pass a resolution on R2P, however, there is no record to indicate what the UNSC meant by this R2P reference in the context of protection of civilians in armed conflict (Nasu 2012, 120).

SG Ban Ki-moon also had an important role in establishing R2P. In his so-called “Berlin speech” in 2008, he took a strong stand in support of R2P. As part of R2P’s conceptual, institutional and political process, SG Ban Ki-moon asked Ed Luck, the Special Advisor on Responsibility to Protect, to work with the Special Advisor for Prevention of Genocide, Francis Deng and develop a strategy for R2P. (UN 2008; SG/SM/11701; Makodoro 2015, 46–47; Welsh 2013, 378; Orford 2011, 17–18; Luck 2010.)

UNSG Ban Ki Moon in his report “Implementing the responsibility to protect” (UNSG 2009) further clarified the concept and established the mentioned three-pillar strategy (Karlsrud 2013, 16; Luck 2015) – the third conceptualisation of R2P. The UNGA discussed R2P, as the World Summit had wished in 2009 and adopted by consensus resolution 63/308 “The Responsibility to Protect”, where it decided “to continue its consideration of the responsibility to protect”(UNGA 2009).



The UNGA has had an informal interactive dialogue on different aspects or pillars of R2P on an annual basis.<sup>12</sup> Further development and discussion were needed, as the first report (UNSG 2009) “posed as many questions as it answered” (UNSG 2010, para. 14). The World Summit Outcome and UNGA resolution 63/308 (UNGA 2009) both referred to the UNGA’s continuing consideration of R2P, and the SG has given his reports on R2P since. In spite of the important role given to the UNSC in the functioning of the R2P, the UNGA became the place where R2P was to be debated. Welsh (2013, 382) argues that this is partly because of the procedural contestation between the UNGA and UNSC and is partly related to the debate regarding UNSC reform. Some member states thought of the inconsistent record of the UNSC in dealing with humanitarian issues and especially the role of great powers in the UNSC. This is reflected well in how it took the UNSC one year to pass a thematic resolution on the Protection of Civilians in Armed Conflict 1674 (2006) and endorse R2P (Welsh 2013, 382; see also Bellamy 2011, 26–33).

Since 2005, African countries have been critical of R2P, so it was important for the SG to get their support. With the narrative of the African roots of R2P, it was important to renew “the sense of African ownership of the issue” that had been lost. Rwanda was active in this work (Luck 2010, 120–122; see also Bellamy 2009, 33–34; Bellamy 2011, 28–31). The SG stressed in his first report (UNSG 2009, para.7–9) how the thinking and practice in Africa related to the idea that “sovereignty implies responsibility” has been impressive, giving his understanding of the origins of R2P.

At the General Assembly in 2009, the origins of R2P were contested as it was the first time the GA addressed R2P directly. Was it a Western notion imposed on the Global South “as a rationale for armed intervention in weaker countries”, or was it of African origin? At that time, it was evident that R2P was a North-South-issue, but in spite of this, it was possible to reach a consensus on the matter and adopt a resolution (see Luck 2010). At the UNGA plenary discussion, Mr. Ajawin from Sudan said, “there is a tendency to misinterpret the notion of the responsibility to protect to mean the right of intervention in the affairs of sovereign States”, but Mr. Gasana from Rwanda stated that his delegation “welcomes the adoption of resolution 63/308, entitled ‘the responsibility to protect’” (UNGA 2009a).

As Orford (2011, 21) argues, it is no longer a question of “whether R2P should be endorsed, but how it should be implemented”. The UNGA resolution implied collective legitimisation and as such, was politically important in that its existence at the UN was confirmed (Madokoro 2015, 53).

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12 In September 2017, it has been suggested and accepted (vote 113 to 21) to include a supplementary item “The Responsibility to Protect and the prevention of genocide, war crimes, ethnic cleansing and crimes against humanity” on the Formal Agenda for the 72<sup>nd</sup> session of the UNGA. Taking R2P on the Formal Agenda of the UNGA means the principled commitment of the UN membership to R2P (GCRP 2017).

Both Luck (2010) and Welsh (2013) have loosely applied Finnemore's and Sikkink's norms of the life-cycle model (1998)<sup>13</sup> to R2P development (see also Serrano & Weiss 2014). Welsh (2013, 378–37) states how R2P, “the norm” emerged (stage one) and institutionalised (at the World Summit) and is now approaching the “norm cascade” (stage two) and diffusion. At this stage, the actors should act consistently according to this norm. The World Summit meant the institutionalisation phase for R2P; it fixed norm's meaning and ended some contestation of the content. However, this approach neglects what happens after institutionalising a norm. There is, however, no reason to believe that normative development would be only a forward going process. It is a political process, so changes may happen (Luck 2010, 119).

Although institutionalisation is an important step as such, it does not mean any endpoint. Norms are inter-subjectively held beliefs; they are further contested, and practices shape their meaning. Regarding R2P, its meaning is by no means lasting or clear; it does not mean the same thing to all actors although institutionalised in the World Summit Outcome Document (Welsh 2013, 380).

Gareth Evans (2008, 54) argued in 2009 that there are three broad challenges for R2P: conceptual, institutional and political (see also Luck 2015). Claes (2012) reflects this same claim by stating that the three major challenges that prevent R2P's implementation are conceptual, institutional and political. He argues that the political context for R2P is not “given” and overcoming R2P is the key for stronger consensus. Claes has formed a group of R2P rejectionists that try to undermine the principle in different R2P debates, but he concludes that the political resistance of R2P is usually pointed at its third pillar. Claes notes how China and Russia usually are not openly dismissing R2P, thus demonstrating the ambiguity of their position (Claes 2012, 72–73). In spite of positive signs that the political project R2P has been shown, it is still at an early stage of its development (Luck 2015, 3). Worthy of note is the fact that the UNSC operates “only” within the Charter when activities have been authorised under pillar III.

In his report (UNSG 2009), the UNSG gave some examples of practices that could be used in three pillars of R2P (UNSG 2009, para. 12): “All three [pillars] must be ready to be utilised at any point, as there is no set sequence for moving from one to another, especially in a strategy of early and flexible response”. Although this was accepted initially, later – after the Libya case – Brazil suggested “Responsibility while Protecting” (RwP) (UNSG 2012; see also e.g. Herz 2014; Stuenkel 2016), which argued for chronologically sequencing the three pillars, meaning that coercive measures should be used only after all other means have been tried and have failed. Bellamy argues (2015, 191–195) against this idea, saying that “conceptually, the the three pillars are so intertwined” that this sequencing is not possible (see also Mennecke 2014, 92). This was also shown in the South Sudan case, where

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<sup>13</sup> Norms emerge (stage 1), they develop, there is a tipping point, “norm cascade” (stage 2) and internalization (stage 3), see in more detail Finnemore and Sikkink 1998.

different practices of the R2P pillars were used when needed, and not in sequence, since the practices are so intertwined.

The three pillars – as discursive practices that constitute R2P – have different statuses. They also refer to different actors and their different protection responsibilities. While the legal status of pillar I is strictly based in international law, pillar II has key elements based on the law, and pillar III is a political obligation (Breakey et al. 2012, xxi). As Francis and Popovski (2012, 87–88) state, “R2P was designed [...] a mobilizing factor for action when atrocities were committed. R2P [...] it is a normative (political), rather than a legal obligation to act” (see also Luck 2010; UNSG 2009; cf. Orford 2011; see also “nothing new” critique, Breakey 2012, 26).

### 3.3.2.1 *Normative obligations to act*

Concepts such as obligation, duty and responsibility refer to a way of thinking and are sometimes used as synonyms. There are, however, different types of responsibilities, such as moral and political responsibilities (see also Kopra 2019, 22–48). A moral responsibility refers to e.g. human suffering; it could be taken as evidence of developing moral conscience but also lack of political will (Beardsworth 2015, 71; also MacQueen 2011, 69). R2P also implies political responsibility. R2P changes the earlier language of responsibility from a moral to a political one, and this new language of political responsibility should be developed further (Beardsworth 2015, 71–72). Beardsworth (ibid., 74) echoes Stanley Hoffman’s thought on how moral and political interests and responsibilities are related, since they constitute “the starting place for reflecting upon and practicing international ethics”. Human suffering, like mass atrocities, must have some relation to national interest; otherwise it will not become a state’s policy (ibid., 75; see also Hehir 2017; Brown 2013). Moral responsibility towards others means that “one can always do otherwise” (Beardsworth 2015, 89), which again reflects how pluralism and solidarism exist at the same time. Beardsworth (ibid., 74) refers to the three criteria for moral responsibility in international relations. There should be “an office of decision”, “the possibility of moral interest in x event”, and “this possibility is contingent”, meaning that despite the moral obligation, it is possible to do otherwise. According to this, the UN and the UNSC have moral responsibilities.

Moral responsibility can refer to responsibility, while political responsibility connotes accountability (Peltonen 2010, 240; also Peltonen 2013). The UNSC has developed its moral responsibility, but has its political responsibility - its accountability - been developed? Welsh (2012, 110) states that the fact that the UNSC has a collective responsibility to act but no mechanism of accountability is problematic. There is no mention of that in the UN Charter. Legal accountability for the UNSC is a reasonable claim but not very realistic. In contrast, political accountability for the UNSC could, and can, be expected. Welsh (2012, 111) suggests further that this accountability should be given to individual states at the UNSC to demand “higher standards of behaviour on the part of Council members”

(see also Peters 2011). For example, the idea not to use the veto, RN<sub>2</sub>V, is a call for greater political accountability.

According to Schmidt (2018) most fundamental human rights enjoy *jus cogens* status; moreover, they carry an *erga omnes obligation*, meaning UNSC members are responsible for “the international community as a whole”. The Council has a moral duty to protect human rights and protect individuals from mass atrocities. However, members of the UNSC see these obligations differently, so the process is not “consistent or fixed” (Schmidt 2018). Instead, it is an evolving process as Bellamy (2015) and Welsh (2013) have suggested. Solidarism and pluralism approach in a different way whether the UNSC has an obligation to protect human rights as has been discussed. Solidarists see it as the UNSC’s duty (see e.g. Wheeler 2000), while pluralists do not take human rights violations as such to be threatening to international peace and security (see Jackson 2000).

The UNSC has stressed its humanitarian obligations and human protection efforts since the early 1990s, e.g. establishing different commissions of inquiry, commissions of experts, international criminal tribunals to investigate and prosecute human rights violations together with PoC activities. Schmidt (2018, 119) argues how they imply the growing normative weight the UNSC puts on the humanitarian obligations, thus showing its collective responsibility (see also UNGA 2005, para. 139.)

Actors other than the UNSC have responsibilities related to R<sub>2</sub>P, and as such, the UNSC is only one actor though a powerful one. The Secretary-General in his report (UNSG 2009) outlined prevention and protection responsibilities for UN Member States, the United Nations system, regional and subregional organisations, and civil society (para. 68, 28; see also Breakey et al. 2012, xx–xxii).<sup>14</sup>

A vast number of actors and institutions have attempted to protect civilians. It is not an easy task, as vulnerable peoples face “determined local armed actors, who perceive that they have much to gain from endangering, assaulting or murdering the unarmed” (Breakey et al. 2012, xxiii). The challenge is to coordinate different actors’ efforts; operationally, a division of labour is necessary, while the challenge remains how to coordinate efforts so the work achieved supports the overall objective, i.e. the protection and security of vulnerable people (ibid.).

### 3.3.3 Pillar I: the protection responsibilities of the State

Pillars I, II and III of R<sub>2</sub>P have been mentioned, but now each pillars will be discussed in depth and considered as discursive practices of R<sub>2</sub>P.

According to earlier definitions, pillar I is a norm and is based on international law. As stated in paragraph 138 of the Summit Outcome,

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<sup>14</sup> Peltonen (2010) has developed a model of collective responsibility, dividing the responsibility burden between different members of the collective.

Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it.

R2P is thus a matter of State responsibility, while sovereignty and statehood mean the protection of population (UNSG 2009, para. 14). Piiparinen (2012a) speaks of the “humanitarisation of sovereignty”, suggesting that human security is a criterion for sovereignty and R2P represents “humanitarian sovereignty-building” by putting people or populations at the centre of everything (Piiparinen 2012). The UNSG (UNSG 2009, para. 16) “stresses respect for human rights as an element of responsible sovereignty; states should become parties to the relevant international instruments on human rights, international humanitarian law and refugee law as well as to the Rome Statute of the ICC ensuring that impunity is not accepted either nationally or globally” (ibid., para. 17). The ICC and other UN tribunals have added an essential tool (or practice) for implementing R2P (ibid., para. 18), and as the ICC has a complementary role, “the national judicial processes are the first line of defence against impunity” (ibid., para. 19).

Both R2P and the ICC have a shared objective to prevent mass atrocities and address them at the national level. From the perspective of both R2P and the ICC, it is up to states to investigate and prosecute mass atrocity crimes. Thus, national courts should be ready to take these cases and should include these crimes in their penal codes. The national institutions should function properly, making the ICC a last resort (Mennecke 2014, 92–93).

The UNSG (2009, para. 21) states that

genocide and other crimes relating to the responsibility to protect do not just happen. They are, more often than not, the result of a deliberate and calculated political choice, and of the decisions and actions of political leaders who are all too ready to take advantage of existing social divisions and institutional failures.

All societies should have mechanisms to deal with these issues. This happened in South Sudan, where there were no mechanisms to deal with such issues, so the state-building efforts of the UN and UNSC aimed to build up these capacities.

The UNSG, in his fifth report on “Responsibility to Protect: State responsibility and prevention” (UNSG 2013), focused on pillar I meaning “to strengthen national capacity to prevent genocide, war crimes, ethnic cleansing and crimes against humanity”. The UNSG stressed advancing R2P through prevention but also underlined the importance of early action (para. 4; see also UNSG 2010). In the report, six risk factors that may contribute to mass atrocity crimes are identified as outlined in the “Framework of Analysis for Atrocity Crimes. A Tool for Prevention” (UN 2014; for prevention see Welsh & Sharma 2012; Sharma & Welsh 2015). The UNSG makes an important note, saying that “while conflict prevention and atrocity prevention are closely related, they are not synonymous, and

atrocities preventive measures should be developed with that in mind. Focusing exclusively on conflict prevention would overlook atrocities crimes that occur outside of armed conflict or that are not necessarily related to armed conflict” (UNSG 2013, para. 13).

Woocher (2012, 27) states that UNSG Ban Ki-moon firmly refers all recommendations to R2P, contrary to what ICISS and Kofi Annan did. They, conversely, argued that mass atrocities prevention meant to focus on conflict prevention. At the time, R2P was a sensitive principle, so for political reasons it was easier to talk about conflict prevention (see Bellamy 2009). Hence, Ban Ki-moon tried to make R2P into more of a political concept (see and cf. Brown 2013).

The report (UNSG 2013) outlines policy options for atrocities prevention, i.e. structural policies and operational measures that build national resilience (para. 35–48), promoting and protecting human rights (para. 49–55), adopting targeted measures to prevent atrocities crimes (para. 56–64), and building partnerships for prevention (para. 69–70; see also UNSG 2011; see also Jacob 2015). This could be summarised as follows (UN 2014, 3):

Prevention is an ongoing process that requires sustained efforts to build the resilience of societies to atrocities crimes by ensuring that the rule of law is respected and that all human rights are protected without discrimination; by establishing legitimate and accountable national institutions; by eliminating corruption; by managing diversity constructively; and by supporting a strong and diverse civil society and a pluralistic media.

It seems that institution-building and capacity-building have a major role in preventing mass atrocities, but this implies that the people or population need to be the main concern, not state structure-building; of course, they are not totally unrelated. The purpose of R2P is to build responsible sovereignties and restrain irresponsible ones; this, in turn, suggests an emerging paradigm of sovereignty-building which is a different phenomenon than the traditional doctrine of state-building and humanitarian intervention (see Piiparinen 2012).

However, as Simon (2012, 2) has noticed, the UNSG’s formulation on pillar I is based on the premise that mass atrocities threats are coming from outside the state, and thus it is the state’s responsibility to suppress those threats<sup>15</sup>. If the state is unable to do so, the international community has a responsibility to help. Simon (ibid.) asks, “What does it mean for a state to have capacity to protect its populations from mass atrocities crimes?” Simon warns about understanding a state’s capacity to prevent mass atrocities only in terms of an enforcement capacity of the security sector. This would also imply that threats come only from the outside – outside the government and outside the borders – and yet, state authorities and their allies have committed mass atrocities, just as non-state actors have (see also Allansson et al. 2017). Simon (2012, 3) argues that the state’s capacity to protect its

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<sup>15</sup> See UNSG 2015, section IV: New challenges in protection meaning different non-state armed groups and new technologies, para. 45–53.



population would mean investing “in legitimate state institutions that are independent of the motives and interest of any particular actor, constituency, or regime”.

There are many examples of governments attacking their own people, civilians e.g. Libya, Syria and South Sudan. In these situations, strengthening institutions could be counterproductive to protection (Simon 2012; see also Gallagher 2015). However, the situation in all these states is complicated. For example, in South Sudan, the state is weak and fragile, and government forces frequently attack civilians (HRW 2015). Where government forces themselves commit mass atrocities, the capacity of different non-state actors and civil society ought to be strengthened instead (ibid., 2012, 5). Committing mass atrocities is possible if there are no other actors strong enough to resist them. Society’s capacity to prevent mass atrocities depends on its support of certain norms – the normative framework of R2P – and how actors disapprove violations of these norms (ibid., 2012).

When discussing sovereignty and responsibility, it should be remembered that the nature of a state has a different understanding in Africa. Especially in the 1950s and 1960s, there was a discussion of whether or not the Western concept of state is suited for African nations. Many African countries do not have functioning state machinery, and the state never has authority across the entire country. They have had their own polities, many of which have had the same qualities as Western states. However, this Western concept of “state” has been preferred by many Africans since the 1960s as a means to politically organize multi-ethnic societies (Holsti 2004, 51), in such a way that “an effective and legitimate state – one that practices good governance and uphold the rule of law – is crucial to protect populations from mass violence” (IPI 2009, 5). Mackenzie and Smith (2015, 71) argue that South Sudan has its place “with the rest of the world”, but it is a long road. The international community must take some ownership in contributing to a just development in South Sudan by considering local ownership, traditions and culture. South Sudan should do its share in this to be able “to join the rest of the world”.

### 3.3.4 Pillar II: international assistance and capacity-building

Pillar II refers to paragraphs 138 and 139 of the World Summit Outcome Document (UNGA 2005), which states

how the international community should, as appropriate, encourage and help States to exercise this [responsibility to protect] responsibility (para. 138),

and

we also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflict break out (para. 139).



The UNSG names three forms of assistance (practices) already referred in his report (UNSG 2009): 1) encouragement to meet pillar I responsibilities; 2) building national capacities through training and institution-building and 3) assisting states in situations of emerging or ongoing crises through providing additional capacity (UNSG 2014, para. 28).

The use of preventive diplomacy is one way to encourage states “to reduce the vulnerability of populations to atrocity crimes” (UNSG 2014, para. 36; also UNSG 2009, para. 30–31). In terms of pillar II and helping states build their capacities to prevent atrocity crimes, the ICC can help states by investigating these crimes and by training national prosecutors and investigators, as many perpetrators would otherwise be unpunished if national systems are not working properly. Also, here, the ICC and R2P are linked in their fight against impunity (Mennecke 2014, 93–94).

UNSG Boutros Boutros-Ghali, in “An Agenda for Peace” (UNSG 1992, para. 28–29), introduced the concept of “preventive deployment”, referring to how UN operations have usually been established only after conflicts, but the “time has come” when they could take place before crises. If a country is threatened and asks for the UN’s presence, preventive deployment could be used. Richmond (2007, 156–157) argues that the “Agenda” implies an idea of liberal peace (liberal democratic institutions as a solution to conflicts and leading idea in peace processes), which necessitates consent by host states.

There are two types of consent-based military activities under pillar II (Luck 2010, 117). One is preventive peacekeeping deployment as in the former Yugoslav Republic of Macedonia (UNPREDEP) and Burundi (ONUB, June 2004–Dec 2006) (UNSG 2009, para. 41). It can be thought that such an operation in South Sudan would have been preferable to the state-building operation that was launched (see Ch. 4). As such, preventive deployment has not been used as much as it could have been. The other type of consent-based military activity is military assistance, including the Chapter VII enforcement mission, such as the one deployed in Sierra Leone (UNAMSIL) (see e.g. Holt, Taylor & Kelly 2009, 36–42). The UNSG (2009, para. 29) states when

national political leadership is weak, divided or uncertain about how to proceed, lacks the capacity to protect populations effectively, or faces an armed opposition that is threatening or committing crimes and violations relating to responsibility to protect, measures under pillar II [...] could also encompass military assistance to help beleaguered States deal with armed non-state actors threatening both the State and its populations.

This operation too, could have been made available in South Sudan according to R2P, but the situation was not interpreted accordingly.

It should be noticed that (UNSG 2009, para. 40)

with host governments’ consent, military units have been employed either for a range of non-coercive purposes, such as prevention, protection, peacekeeping and disarmament, or to counter armed groups that seek both to overthrow the

government by violent means and to intimidate the civilian population through random and widespread violence.

This means that the use of force is also possible in operations under pillar II (see also Luck 2010; Gallagher 2015, 1264), and as the UNSG notes, “consent-based peacekeeping, of course, is a United Nations innovation” (UNSG 2009, para. 40). For this reason, states generally accept pillar II’s use of force since it does not undermine state sovereignty, unlike the use of force under pillar III (e.g. Libya). According to Johnstone (2011, 169) the distinction in mandates between Chapter VI and Chapter VII has become artificial, since many Chapter VI consent-based mandates can have Chapter VII mandates to use “all necessary means” to protect civilians. This difference has a political meaning in how consent is managed, how a balance between consent and coercion is achieved. Peace operations need a host state’s consent to operate – a request to the UN to support e.g. a peace agreement. Further, as Johnstone (*ibid.*, 169–170) argues, by “consent”, the implication is “consent by pressure”, because “consent by invitation” can be open-ended. Nevertheless, how can consent with a host state be achieved if the political process is complicated and, at the same time, carry out the mandate? Such was the problem in South Sudan.

All measures under pillar II should be taken in cooperation and with the consent of the host state. The spirit of pillar II – as articulated in the sixth report of the UNSG: “Fulfilling our collective responsibility: international assistance and the responsibility to protect” (UNSG 2014, para. 12) – is that of sovereign equality reaffirmed by the principle of Article 2 in the UN Charter: “As sovereign equals, States have both reciprocal rights and responsibilities and participate, as peers, in the creation and maintenance of international rules, norms and institutions”. The aim is to reinforce, not undermine, sovereignty (UNSG 2009, para. 13) and thus, there is no problem for the international community to support pillar II. However, this can cause problems. States that themselves commit R2P crimes may support pillar II, in as far as they emphasise state consent and sovereignty, e.g. South Sudan. However, this activity is not in line with R2P (Gallagher 2015, 1267).

The UNSG (2014) has remarked that if the state itself is committing mass atrocities, assistance practices under pillar II “would be of little use”, and the international community should look for possibilities under pillar III (see also Mennecke 2014, 94). This reference could be an answer to whether there is a danger in supporting and helping governments which are themselves committing mass atrocities. The idea of pillar II is to help build and rebuild responsible sovereignties in the spirit of prevention (see also Piiparinen 2012).

### 3.3.4.1 *Whom to help*

Peacekeeping belongs to category three (see above), in “assisting states to protect their populations”. Gallagher (2015, 1271) poses an important question by asking who ought to be assisted, exactly, as there are so many actors in civil wars, such as e.g. in South Sudan. The idea in R2P, especially concerning activities under pillar II, is that the international

community help states build “effective, legitimate and inclusive governance”, meaning “accountable political institutions, respect for the rule of law and equal access to justice” (see also UNSG 2014). “Good governance” can minimise the risks of R2P crimes. However, what if the same government is responsible for these crimes? From this perspective, pillar II can become a problem instead of a solution. For example, the conflict in South Sudan poses a challenge to pillar II (see Chapter 4). However, like in South Sudan, non-state armed groups are also committing these crimes. Governments seeking assistance to fight such groups can fail to build an effective and legitimate government or even get involved in committing crimes against civilians. The UNMISS Human Rights Division (HRD) found that in South Sudan, “there are reasonable grounds to believe that violations of international human rights and humanitarian law have been committed by both parties of the conflict” (UNMISS 2014a, 3). The same was concluded by the African Union Commission of Inquiry on South Sudan (AUCISS 2014; see also HRC 2014; HRW 2015). Before getting more assistance, substantive changes need to happen in South Sudan’s policy. There are two possibilities, the policy of *selectivity* (supporting good existing practices) or *conditionality* (assistance on the premise that the recipient makes changes in its activities in the future). Which choice should be made when thinking of the suffering civilians (see Gallagher 2015, 1274)? This kind of activity most probably also violates one of the basic principles of UN peacekeeping, that of impartiality. Non-state groups can have a strong influence on local people, but the UN is working with the government – perhaps against the wishes of other political groups (Mateja 2015, 359; see also Johnstone 2011, 175–176).

This relates to the problematic question of local ownership (Gordon 2014). Who takes the lead, the international community or locals? Are local conditions, local complexity considered enough as the prerequisite for to achieve sustainable peace (see Woodward 2007; also Johnstone 2011, 175–176)? Roberts (2013, 70–71) argues that international and national metropolitan interests do not reflect heterogeneous societies. It is not that they are insensible of local conditions, but they are not just present in their agendas. According to this liberal peace critique, liberal peace-building does not fit well with local complexity, as it is what needs to be determined and known already before, thus referring to “conceptualizing peace from above” (Richmond 2007; 2009; MacGinty & Richmond 2013; also Chandler 2004). This seems to put more emphasis on the means, i.e. institution-building, rather than the end, i.e. peace. It is thought that this process produces peace by default, or in Galtung’s terms, “negative peace”, meaning the absence of violence (see Galtung 1969). This also suggests that state security – a step beyond human security, i.e. state (security and justice sector) institutions – should be responsive to its people and gain their trust (Gordon 2014), resulting in “positive peace” or “social justice”, meaning the absence of structural violence, according to Galtung’s terminology (see Galtung 1969; also MacGinty & Richmond 2013).

Schaefer (2010, 500–501) argues that the peace-building interests of international governmental organisations are not so clear and self-explanatory to allow strict verdicts on their agenda either by “a centralized state with a free market economy as a ‘greed’

explanation” or by human security and an R2P explanation. Some peace-building goals can support the interests of outside states or international organisations but also address the interests of local populations. Accordingly, each aspect or goal of peace-building should be considered separately.

The UN supports sustainable peace, and it is the aim of all peace processes. Sustainable peace refers to five areas, while peace-building priorities could be named as: supporting the basic safety and security; supporting political processes; supporting basic services, the rule of law and human rights; supporting core government functions; and supporting socio-economic development, economic revitalisation (UNSG 2009a, Ch. III). In peace-building processes, national challenge and national ownership are stressed (UNSG 2009a, para. 7; see also UNSG 2015a). But the UN is not very clear what this means, national and local ownership is suggested to mean the same, but this is not the case e.g. in South Sudan if the government is not considered as legitimate by all citizens (Mackenzie & Smith 2015, 58–59). The priorities in these peace-building practices are not necessarily the same as for the local populations – frameworks for peace has not been necessarily negotiated with locals (even if it is known who they are) as a means to respect their needs (see Richmond 2007, 158) – but in any case, peace-building is a norm-guided activity that aims to provide social change aiming to some ends. As Schaefer (2010, 512; also 501–508) states, “Peace-building without cultural sensitivity is empty; cultural sensitivity without cosmopolitan values is blind”. These questions can only be solved by considering both sides, taking the “local turn” seriously.

However, this problem has been noticed. Peacekeeping operations are deployed in demanding and complex situations where there is “no peace to keep”, as the expression goes. Since the Cold War, there has been a series of reports and reviews to discuss and develop peace operations. The latest of them, “Report of the High-level Independent Panel on Peace Operations on uniting our strengths for peace: politics, partnership and people” HIPPO (UN 2015), along with the UNSG (2015a) in his follow-up to HIPPO, emphasise e.g. a people-centred approach<sup>16</sup> (see also SCR 2019). HIPPO followed Secretary-General Boutros Boutros-Ghali’s “An Agenda for Peace” (UNSG 1992), “Report of the Panel on United Nations Peace Operations” (UN 2000), the so-called Brahimi Report according to its chair, and, “A Report of the High-Level Panel on Threats, Challenges and Change: A More secure World: Our Shared Responsibility” (UNSG 2004).

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<sup>16</sup> Karlsrud (2015a) has discussed how the UN peace operations could become more people-centred. This being not an easy task, but this could develop e.g. by not talking only with the elites, but also with local community, representatives of youth, women, traditional and religious and academic leaders. To be able to do that, a country and its conflict history should be known well to be in contact with relevant actors.

### 3.3.4.2 *Consent and impartiality in peace operations*

Dag Hammarskjöld was the first to mention the concept of impartiality in 1957 and again in 1958. Since then, the three principles – consent-based, impartiality, use of force only for the self-defence or in defence of the mandate – of UN peacekeeping have remained the same. There have been voices that these principles should be renewed. The HIPPO Report stated that these principles “should never be used as an excuse for failure to protect civilians or to defend the mission proactively” (UN 2015, para. 125). Moreover, their interpretation should be flexible and proactive (*ibid.*). As discussed, managing consent should not mean unquestionable support for the host government. It would be good to keep political distance but also all necessary relations so that the mandate could be fulfilled. It should rather be related to the principle of impartiality (Johnstone 2011, 180).

There are different interpretations of impartiality (see e.g. Donald 2002; Boulden 2005; Yamashita 2008; Grady 2010). According to Nasu (2012, 123; also Johnstone *ibid.*), impartiality can be understood in two ways. There is subjective impartiality, meaning that peacekeepers treat with warring parties equally. The other possibility is to see impartiality as objective impartiality, meaning a commitment to respect the mandate and principles of the UN Charter. Impartiality can be understood to mean

impartiality is not the same as neutrality or equal treatment of all parties in all cases for all time, which can amount to a policy of appeasement. In some cases, local parties consist not of moral equals but obvious aggressors and victims, and peacekeepers may not only be operationally justified in using force but morally compelled to do so (UN 2000, para. 50).

However, while robust peacekeeping operations have been criticised, there has been no willingness to use force to protect civilians even though there have been opportunities to do so, since several missions have mandates under Chapter VII of the Charter to use force to protect civilians (Foley 2016; cf. Mateja 2016). As Bellamy and Williams (2011b, 189–190) note, UNPROFOR in Bosnia had a mandate to protect civilians and safe areas – this against popular mythology, as they say. In 1998, the UNSC referred to the Serbian government as a spoiler<sup>17</sup> in Kosovo, but no action against them was taken up in either case.

Nasu notes further (2012, 123) that maintaining subjective impartiality to the UN operations is important in facilitating peace processes but from the point of view of R2P, this can cause problems. Mass atrocities are crimes according to international law, and their perpetrators are considered criminals (see Welsh & Sharma 2012). This does not make the discussion on R2P any easier. This is a big question for the UN and the UNSC: should the UN need to overcome the distinction between aggressors and victims, as parties may consist of aggressors and victims, “not of moral equals” (UN 2000, para. 50). As Bellamy and Williams (2011b, 189) argue “identifying ‘spoilers’ is one thing, doing something about

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<sup>17</sup> Spoilers are those who try to spoil the implementation of a mandate or peace process more generally (see e.g. Bellamy & Williams 2011a).

them s another”. However, HIPPO (2015) repeats the basic principles, while these should not prevent the protection of civilians.

Also, the Brahimi Report (UN 2000) stated that neutrality is not the same as impartiality. Neutrality deals with the “apolitical character of a peacekeeping operation, mandating peacekeepers to hold no prejudice towards participants in a conflict and not to influence the course of events” (Nasu 2009a, 23–24). In the post-Cold War context, this kind of neutrality has become difficult, especially in civil war cases. While neutrality could refer to passivity, impartiality could refer to activity (ibid.). This change in approach has signified a change in focus towards substance, and a change in how parties in the conflict are treated (ibid., 25). The HIPPO Report (UN 2015, para. 126) remarks that the impartiality of United Nations missions

should be judged by its determination to respond even-handedly to the actions of different parties based not on who has acted but by the nature of their actions. Missions should protect civilians irrespective of the origins of the threat. They should promote respect by all actors for the human rights of the local populations and the combatants regardless of affiliation. They should seek political solutions respectful of the legitimate interests and grievances of all parties and society at large.

This could reflect the growing meaning of human rights in peace operations, protection of host populations and merging human rights as part of institution-building in the spirit of pillar II (Smith 2016, 183). Many UN resolutions, reports and documents stress the relevance of international humanitarian law and international human rights law in peace operations but with little guidance on how it should be done, while R2P has also made no progress in this regard (Foley 2016). For example, UNMISS in South Sudan has a robust mandate regarding human rights and the protection of civilians (see resolutions 1996 (2011); 2057 (2012); 2155 (2014)) but was left to interpret how the mandates could be applied.

Since “civilian protection” is a broad concept, it can be interpreted in many ways. Holt, Taylor and Kelly (2009, 4–7) note how the concept for protection of civilians can be interpreted differently in peacekeeping operations. This means that the Council’s intent is not clear when it comes to “policy guidance, planning or preparedness”, and so there is a strong need for a clarification of its expectations concerning the civilian protection mandates (also SCR 2015; 2019). Shesterinina and Job (2016, 240) present a harsh critique on how the protection of civilians has occurred despite the “impossible mandates” and the fact that the resources for the mission are in inadequate proportion to the mandates’ demands. This is not, however, the whole picture. They have developed an argument on “particularised protection”, as the UNSC mandates have meant protection practices only to some parts of civilian population, in other words, those who are important “to the UN itself, the host state, other states, NGOs and media”, local civilians are left without that protection for which the mission is established (see also Shesterinina 2016).



Peacekeeping operations under pillar II are, as mentioned, consent-based. This distinguishes them from enforcement operations under pillar III. As the UNSG has stressed, all policies under pillars I, II and III should be related to mass atrocities. What then does R2P mean in terms of peacekeeping operations, if the practice of civilian protection under Chapter VII has been included in all mandates since 1999, and furthermore: how are R2P and PoC related?

Some have argued that it is unclear how R2P and PoC are related (Nasu 2012, 118–119). The first mandate, Resolution 1289 (2000), UNAMSIL in Sierra Leone, with an explicit civilian protection mandate, was not related to human security. The resolution 1706 (2006) on Darfur/Sudan was the first resolution with a civilian protection mandate and clear reference to R2P. However, it was not clearly linked to the mandate, but rather referred to it in the preamble of the resolution. So in neither case was it made clear how the civilian protection mandate relates to R2P (Nasu *ibid.*, 119–121).

Nasu (2012, 118–119; 122) contributes to considering how R2P could be operationalised and understood in civilian protection mandates. According to Nasu, there are three possible ways to see their relationship: firstly, “civilian protection mandate as the implementation of pillar II strategy”; secondly, “civilian protection mandate as operationalising the responsibility to prevent”; and thirdly, “civilian protection mandate as operationalising the pillar III strategy”. Nasu argues that while there are grounds for merging these two concepts of PoC and R2P, it would have implications for peacekeeping operations. For this reason, Woocher (2012) argues that responsibility to prevent should be distinguished from other international agendas so the prevention of mass atrocities is seen as a separate process from the prevention of conflicts. So according to this logic, there should be clear R2P mandates in response to mass atrocities that are occurring.

The international response to Kenya’s 2007–2008 post-election violence has been considered a success story of preventive R2P action, as it was eventually resolved without any recourse to violence. However, Sharma (2015, 303) describes the international response in Kenya as “coercive”, since some external pressure was evident. Preventive action was not successful in addressing the main problems causing the violence or the problem of impunity, and this led to the ICC’s involvement. This led Kenya to signal its possible withdrawal from ICC in December 2016 (VOA News 2016).

As long as state sovereignty is emphasised, it is difficult to extend R2P during early phases of conflict as has been stated (Nasu 2009, 217). Hehir (2015) argues that R2P has changed the original human security meaning of empowering individuals, not that of states. Although the UNSG (UNSG 2009, para. 11b) has emphasised, “Prevention, building on pillars one and two, is a key ingredient for a successful strategy for the responsibility to protect”, it should be noted that prevention could mean or be interpreted to mean an interventionist act. Nasu’s third point – civilian protection as the operationalisation of the pillar III strategy – entails non-consensual operation in the spirit of R2P (see also Holt & Berkman 2006).



The UNSG (2012, para. 17) states that assistance under pillar II helps the state meet its pillar I responsibilities and thus makes pillar III action unnecessary, which reminds of the interrelations of the three pillars. However, as Mennecke (2014, 94) notes, if the state's actors are not acting like responsible sovereigns, pillar III is activated.

### 3.3.5 Pillar III: International community's responsibility to take a timely and decisive response

Pillar III is perhaps the most controversial of the pillars, as it includes the possibility of using force. These timely and decisive responses mean pacific measures under Chapter VI of the Charter, coercive measures under Chapter VII, collaboration with regional and sub-regional arrangements under Chapter VIII, and measures under Chapter VII<sup>18</sup> should be authorised by the UNSC. The best result is achieved by “an early and flexible response, tailored to the specific needs of each situation” (UNSG 2009, para. 11c; also para. 49).

According to the World Summit Outcome Document (UNGA 2005, para. 139):

The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means in accordance with Chapters VI and VII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity [...] should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity we are prepared to take collective action in timely and decisively manner.

#### 3.3.5.1 *Manifestly failing and its criteria*

Gallagher (2014, 428) asks, “What constitutes a ‘Manifest Failing’?” and argues that better understanding of the this would mean fewer problems and more consistency related to R2P. He argues that “inconsistency is evident in R2P discourse”. Terms or concepts “manifestly failing” or “unable or unwilling” are used interchangeably by others who think “manifestly failing” would be more objective as a term than “unable and unwilling” and create a higher threshold for pillar III action. The term appeared for the first time in paragraph 139 of the World Summit Outcome Document, and it is difficult to trace how and why this change of terms occurred (Gallagher 2014, 429–433).

“Manifestly failing” may give a reason for ambiguity but also for inconsistency, a problem that relates to three interconnected agendas of protection at the UN and the UNSC and the interpretations and discourse of R2P. Gallagher (2014, 433–435) argues that ambiguity

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<sup>18</sup> For a detailed analysis of the meaning of Chapter VII, see Security Council Research Report (2008) “Security Council Action under Chapter VII: Myths and Realities”.

and inconsistency when using the terms “manifestly failing” and “unable or unwilling”, or even “manifestly unable” or “unable or manifestly unwilling” can be perceived as “Western manipulation of R2P” and raise fears of armed interventions and involvement in other countries’ internal affairs. R2P provides or could provide “an opportunity to overcome international inaction” in situations of R2P crimes (Rosenberg & Strauss 2012), but this does not have to entail armed interventions.

Gallagher (2014, 432–439) refers to Sheri Rosenberg’s research project, “Assessing the Parameters for Identifying a ‘Manifest Failure’ to Protect Populations under R2P”, and shows that there are unresolved issues related to “manifest failing”. It means that a threshold, a line, has been crossed, like in Libya, although there is still no clarity as to what “manifestly failing” means. However, paragraph 139 refers to the “case-by-case” approach, there is no “one-size-fits-all” approach, as mass atrocities are extremely difficult and different from each other. However, there should be consistency: states and the UNSC need something on which to base their judgements (also Bellamy 2010). Gallagher suggests establishing indicators for assessment but warns that they should not be simple check-lists for reckless sovereigns. His suggested five key indicators of a “manifest failing” are: “(a) government intentions, (b) weapons used, (c) death toll, (d) number of people displaced, and (e) the intentional targeting of civilians, especially women, children and the elderly” (ibid., 439). However, there are no common standards to evaluate R2P cases (Rosenberg & Strauss 2012, 1). This could explain why it is difficult to interpret whether a case is an R2P case or whether it is a PoC case, but according to these criteria, South Sudan is a clear R2P case. A clear PoC case would refer “only” to individuals, as a clear R2P case refers to populations.

R2P has been invoked in different situations – Darfur, Kyrgyzstan, Myanmar/Burma, Côte d’Ivoire, Sri Lanka, Libya, and Syria – and the international responses have been both ineffective and effective. Rosenberg and Strauss (2012) suggest standards and guiding principles to provide an approach which could be used on a case-by-case basis to analyse whether the situation is a potential R2P situation. The principles are: “*Principle 1*) determination of relevant human rights violations; *Principle 2*) determination of the level of gravity or seriousness of potential violations; *Principle 3*) application of R2P, and *Principle 4*) determination whether a state is ‘manifestly failing’ to meet its responsibility to protect” (ibid., 3–4). Thus, “manifestly failing” refers to human rights violations and risk factors should have been eliminated. Human rights violations can also happen in the future, but they can happen only if the obvious consequences have not been dealt with; the risk level can be the same or even increase (see also UN 2014; Welsh & Sharma 2012; Strauss 2014), as was the case in South Sudan.

The UNSG Report “Responsibility to protect: timely and decisive response” (UNSG 2012, para. 8, 11) emphasises the different dimensions of pillar III and evaluates the relationship between the three pillars, stressing that “one should not draw too sharp a distinction between prevention and response” as they, “in practice, often merge”, thus

taking a different stand than do Welsh and Sharma (2012; Sharma & Welsh 2015). The UNSG gives an example of how international assistance, under pillar II, as an international commission of inquiry when establishing facts and identifying perpetrators of R2P crimes, “can also be a pillar three action insofar as it constitutes a timely and decisive response” (UNSG 2012, para. 12). This could refer to UNMISS human rights reports (UNMISS 2012; 2013; 2014; 2014a; 2015; 2015a; 2015b) or AUCISS reports (2014; 2014a).

Also, Bellamy (2011, 41) emphasises the interrelatedness of the pillars by referring to Kenya’s post-election crisis because it better suits pillar II than pillar III, as R2P was used primarily to encourage Kenya’s political leaders to meet their pillar I responsibilities, and since “encouragement” belongs to pillar II (see also Bellamy 2015; see & cf. Sharma 2015). This interrelatedness and overlapping have also caused confusion in triggering R2P action.

Breakey et al. (2012, xxi; also xiii) define pillar III protection modes as “direct protection from atrocity”, meaning robust measures authorised by the UNSC can be required to protect populations from atrocity crimes by “dedicated atrocity-protection activities” such as condemning atrocity situations and authorising arms embargoes and targeted sanctions; “The international community creates an environment where states are pressured to assume their protection responsibilities”, and as “restorative protection” means the responsibility to rebuild nations and institutions after interventions by e.g. legal prohibitions, dedicated protection activities or mainstreaming protection.

### 3.3.5.2 *Chapter VI of the UN Charter*

The tools available for implementation under Chapter VI “Pacific Settlement of Disputes” are many and various, “including negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies and arrangements, or other peaceful means” (UNSG 2012, para. 22).

Much hope and attention have been given to mediation and preventive diplomacy since pillar III tools are most effective when different actors work together e.g. in the Intergovernmental Authority on Development (IGAD)-led negotiations in South Sudan<sup>19</sup>. They have been used “to facilitate dialogue with the parties, with the aim of stopping the violence and preventing recurrence, promoting human rights, combating impunity, supporting national reconciliation and economic reconstruction, as well as engaging the parties on specific protection issues, such as humanitarian access and security” (UNSG 2012, para. 24). This list is impressive, and mediation efforts in South Sudan reflect these aims.

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<sup>19</sup> The UNSC has backed IGAD-led negotiations. According to ICG estimates, the UN, AU and bilateral partners did not offer or were asked for bigger support (ICG 2015, 19). The South Sudan conflict is a sensitive issue to the UN and the US because of the mainly failed policies and “the wisdom of encouraging the creation of the state of South Sudan” (ICG 2015, 19). However, the international community has been neither united nor effective.

### 3.3.5.2.1 *Preventive diplomacy*

Preventive diplomacy has a long history at the UN. Since Secretary General Dag Hammarskjöld first articulated the concept of preventive diplomacy,<sup>20</sup> it has gained support at the UN with varying definitions (see Ramcharan 2008, xxv–xxvii) and taken many forms, so it has been an enduring idea of the UN's for many decades (UNSG 2011a; see also Ododa Opiyo 2012).<sup>21</sup> Boutros Boutros-Ghali (UNSG 1992, para. 20) explained it as a way “to prevent disputes from arising between parties, to prevent existing disputes from escalating into conflicts and to limit the spread of the latter when they occur”.

Since the Cold War, the UNSC has been active in matters of preventive diplomacy and mediation. Preventive diplomacy has come to reflect “its identity and sense of purpose” (IPI 2012, 2), thus reflecting Kofi Annan's (UNSG 2005) definition of the prevention and resolution of deadly conflict. While the UNSC could have been more effective and used more tools under Chapter VI, it has relied more on peacekeeping, peace-building and sanctions under Chapters VII and VIII of the Charter.

Successful preventive diplomacy and mediation would require that mediators and bodies work together, in which there is consistent support from the UNSC, a joint aim and measures (see IPI 2012, 2–3; UNSG 2012, para. 24; Lindenmayer & Kaye 2009; Keck 2011; Babbitt 2014, 33–37; 41–43). The UN faces some challenges in its preventive diplomacy efforts (Ododa Opiyo 2012, 75–78). There are resource problems of a different kind and logistical problems. Different kinds of problems are those when conflict parties do not want the UN's help. Early action is of immense importance, but it is exactly at this stage that the parties are often not willing to have any help, as it means admitting they have a problem, and this would entail internationalising their issue. Also, the question of sovereignty could limit or restrict action from both sides; conflict parties could see the situation as involvement in their domestic issues, and the UN and UNSC want to avoid that kind of interpretation of their action. Ododa Opiyo (*ibid.*) contends that there is also a challenge related to UN personal professionalism, effective preventive diplomacy and mediation in complex and demanding situations in an increasingly professionalised field. If the mediators are not competent enough, the demand for the success of preventive measures – that different actors work together and have the same aim – is hindered.

In 2001, there was a serious effort to secure a peaceful referendum in Sudan for the future of South Sudan according to Comprehensive Peace Agreement (CPA) (2005) between the Government of Sudan and the Sudan People's Liberation Movement.<sup>22</sup> The

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20 Hammarskjöld expressed the idea to mean “keeping regional conflicts localized so as to prevent the spill-over into the superpower arena” (see Ackermann 2003, 340).

21 For the history of preventive diplomacy at the UN, see Ramcharan 2008.

22 The CPA ended Sudan's civil war and was considered a huge diplomatic success (see Africa Program 2008). The international community concentrated on this peace process and mostly forgot the Darfur crises, and it seems the same happened again. The international community concentrated on the CPA and forgot to see what was happening in Southern Sudan (see Ch. 4).

UN and the AU worked together to secure the process. The IGAD countries supported the process, and the so-called troika-countries – in this case, Norway, the United States and the United Kingdom – secured external support for it. The efforts were so concentrated on having a peaceful referendum that other problems and issues were left out, which proved out to be critical to South Sudan. These issues were serious security challenges in different parts of South Sudan and the new state of affairs between Sudan and South Sudan (IPI 2012, 3). The moment for early action and prevention was lost, and the UNMISS was left in a difficult situation.

#### 3.3.5.2.2 *Mediation*

Mediation, negotiation and diplomacy are consensual processes. So in what way can they be of help if mass atrocities are occurring (Mephram & Ramsbotham 2007; Bercovitch & Jackson 2012)? As a strategy to prevent mass atrocities, mediation faces problems. Babbitt (2014) discusses how the human rights agenda of R2P and conflict management or the resolution agenda of mediation could indeed work together. Again, there is a question of overlapping agendas when discussing *unified* mediation in mass atrocity and armed conflict situations. Babbitt refers to mediation in Kenya in 2007–2008 and Côte d’Ivoire – in 2010, and while on Kenya further violence was prevented and power-sharing arrangement was achieved, in Côte d’Ivoire, military force was needed to reach a political solution. In both countries, there was violence after elections which were contested causing an atmosphere of distrust. To succeed, mediators need to work together with a joint aim; there ought to be power as well as mutual benefits in that unity. This is the “Kenya lesson” to be learned (see also Keck 2011). Babbitt (2014, 43–44) concludes that the human rights and different mediation approaches can be employed together when there is a risk of mass atrocities or at the very least, the approaches are not contradictory.

Security Council visiting missions have been used for many purposes: “information gathering, support for peace operations and peace processes, conflict mediation and preventive diplomacy” (SCR 2017, 14). As such, the UNSC should be able to give a unified message to all parties and maintain its unity when it returns from these visits. A unified UNSC would give a strong signal to e.g. mediators and others in the process, and thereby strengthen its own role. However, the Council loses this if the parties realise that the UNSC is not unified and that there are divisions among Council members which could lead to, for example, a peace process being hampered. The UNSC visited South Sudan and Addis Ababa in 2016. Council members were unified at first in demanding the government follow UNSC Resolution 2304 (2016), in which it extended UNMISS and authorised expanded peacekeeping forces to strengthen civilian protection efforts by asking the South Sudan government to accept the deployment of a Regional Protection Forces of 4000 soldiers, or other “appropriate measures” would be taken such as an arms embargo. However, this

consensus vanished after the visit; the South Sudanese government used this and made deployment difficult (SCR 2017, 14).

The UNSC had conducted an earlier visit to South Sudan in August 2014 as part of its visiting mission to Europe and Africa. The aim of the visit was to put pressure on the parties and for information gathering, as it was known that “there were reasonable grounds to believe that violations of international human rights and humanitarian law had been committed by both parties of the conflict and that crimes against humanity had occurred” (UNMISS 2014a). The UNSC met South Sudan’s cabinet in Juba; Ambassador Samantha Power spoke for the UNSC, as the US was the penholder on South Sudan. She urged the parties in the South Sudan conflict to take the peace process seriously, as there was “no military solution to the conflict”, and the UNSC was ready to impose sanctions on any spoilers of the peace process. The Council also met President Kiir, who was said to be committed to the peace process in Addis Ababa, but it was the opposition leader, Riek Machar, who opposed it. Machar accused the IGAD of not being an impartial mediator. The main issues for the UNSC thus became how to get the parties to stop fighting and whether the IGAD-led peace talks should be rethought since the main parties were criticising the process. The UNSC had supported the IGAD-led peace talks (SCR/mf 2014a; see also ISS 2014), but the process was rethought perhaps a bit too late.

#### 3.3.5.2.3 *Ending impunity*

The ICC and R2P have the same aim; they both try to prevent mass atrocity crimes and when necessary, address them when domestic authorities have failed in their work. As Schiff (2016, 308) states it would be “tempting to propose that R2P and the ICC can be fully complementary”. Some argue that the ICC is linked to pillar III, according to Article 13 of the Rome Statute the UNSC can refer relevant cases to the ICC prosecutor. This is a practice of accountability in the fight against impunity. The UNSC has twice referred a case to the ICC prosecutor, in 2005 for Darfur and 2011 for Libya (Mennecke 2014, 95).

However, the ICC is formally a non-political body, while the UNSC is a political body – as opposed to judicial – meaning its decisions are inherently political (see e.g. Bellamy 2016b, 256). Still, the ICC functions in a political context, and as Schiff (2016, 309) argues, “the best it can do is substitute good political judgement for putatively non-political judgement, in the tasks of situation and case selection and public pronouncements. The actions of the Prosecutor are key”. The ICC and R2P are normatively complementary as they rely on international commitments to prevent and respond to mass atrocities and respect sovereignty. It has been said that “the ICC is not merely a court of criminal law, but part of a greater international system fighting R2P crimes” (Mennecke 2014, 102; see also Schiff 2016, 302; also Ralph 2016). International disagreements and national interests still, however, “influence the implementation of international criminal justice” (Ralph 2016, 649; see also Weller 2002).



The UNSG (2009, para. 17–19), in pillar I responsibilities, identifies how states should become parties to e.g. the Rome Statute of the ICC. This implies that impunity is no longer accepted. In principle, the ICC ended impunity in international law (Rosén & Parkkari 2004, 336) and to do so, the ICC provides tools for R2P (see also Mennecke 2014). National judicial processes come first in ending impunity; the ICC is complementary to this process, thus implying the value of state sovereignty. However, at the same time, ratifying and being a party of the Rome Statute implies accepting sovereignty as a responsibility (Ralph 2016, 648). Measures under pillar I also mean capacity-building in the sense that the ICC could assist states in developing their judicial systems. Saxon (2015, 136–137; 157) noted further that “relatively strong national institutions may increase the potential for the ICC to prevent and/or deter the commission of crimes” (see also Mephram & Ramsbotham 2007, xii–xiii; Mennecke 2014).

The UNSG (2012, para. 29) states the “threat of referrals to ICC can [...] serve a preventive purpose and the engagement of ICC in response to the alleged perpetration of crimes can contribute to the overall purpose of ending of impunity”. This refers to deterrence, which implies a fear of punishment that threatens potential perpetrators (Saxon 2015, 119–120). Since the aim of the ICC and R2P are the same – preventing mass atrocities – the result for the ICC is a mixed one (*ibid.*, 159), and the same can be said for the R2P. In any case, this prevention aspect is one approach the ICC can take from its R2P component, and it should not be undermined. The prevention aspect related to ICC also relates to pillar II activities; the ICC encouraged member states to assist others in building their national capacities to respond to R2P crimes (Mennecke 2014, 97–98).

These prevention practices could thus contain similar tasks which strengthen civil society, democracy and rule of law and reduce social polarisation, as the UNSG (2009, para. 15) stated, “states that handle their internal diversity well, foster respect among disparate groups, and have effective mechanism for handling domestic disputes and protecting the rights of women, youth and minorities are unlikely to follow such a destructive path” (see also Schiff 2016, 302–303; Mennecke 2014, 97–98).

R2P can try to prevent the political order from failing with political or even military means, while the ICC can focus on deterrence (a process within the criminal justice system) (Saxon 2015, 119) or the prosecution of individuals who are committing these crimes. If R2P and the ICC are to support each other, there should be action by the Security Council, an authorised intervention, and the ICC, investigations and prosecution (see also Schiff 2016, 303; also Grono 2006). This could be part of pillar II responsibilities.

When the ICC prosecutor investigates, as with the ICC investigation in Sudan in relation to the Darfur case, he faced claims about how his investigation was blocking peace in Sudan. The Sudanese government was opposed to these investigations since they would question its power. Regardless, impunity should not be an option in cases of mass atrocities (Grono 2006). According to Kofi Annan (UNSG 2004a), the question is not whether justice and accountability ought to be pursued, but how and when.



Thus, there is a role for the UNSC. It can, under Article 13 of the Rome Statute, refer a case to the ICC, and under Article 16, it can put investigations on hold to be renewed within 12 months. If peace processes are going on at the same time as the ICC prosecutor is conducting an investigation, and if it proves that peace and justice are harming each other or acting in contradiction with one another, the UNSC should use its authority and put the investigation on hold. This would allow more time to reach a political agreement, to save peace without losing opportunities for accountability. This opportunity ought to be used as a last resort, but it could contribute to international peace and security (Grono 2006).

The UNSC has not used its powers as effectively as might be possible. Different approaches to sovereignty, the political interests of powerful states and the right to veto could be considered reasons for this (see SCR 2017). The UNSC made an attempt to refer Syria to the ICC in May 2012 but it failed when two negative votes (China and the Russian Federation) were cast (S/PV.7180). Those in favour spoke of accountability for the crimes committed as well as the UNSC's accountability. Russia and China have interpreted sovereignty in a traditional sense; there is impunity inside a state, or "sovereign impunity" as it could be called.

The representative of the Russian Federation stated,

P5 unity is important. [...] Why deal such a blow to the P5 unity in this case? Is it just to try once again to create a pretext for armed intervention in the Syrian Conflict? [...] P5 unity is inflicted in a critical moment [...] in the efforts to find a political solution to the Syrian crises (S/PV.7180).

The Representative of Syria accused the others of playing Dr. Jekyll and Mr. Hyde: they are trying to be good guys, but in reality, they are evil guys. The Syrian government and the national investigation committee work alongside the Syrian judiciary. Syria's government has a desire and ability – or, in R2P language, is "willing and able" to have justice done and negates any international judicial body "that might contradict our national judiciary powers" (S/PV.7180).

### 3.3.5.3 *Chapter VII of the Charter*

#### 3.3.5.3.1 *Sanctions*

Sanctions belong to pillar III and are an established practice in international society. They are meant to see that international norms such as human rights are observed. They are not meant to be taken lightly but are available to uphold and enforce norms. Furthermore, sanctions are issued collectively, which the UNSC can do (Wilson & Yao 2018, 128).

The UNSC can, under Article 41 and 42 of the UN Charter, authorise “coercive measures” including sanctions. The UNSC has done this since 1963<sup>23</sup> when it imposed sanctions on the apartheid regimes of South Africa and Southern Rhodesia. The use of sanctions has grown since the 1990s in the form of targeted sanctions related to internal conflicts. These targeted or “smart” sanctions have signified “a significant tactical innovation” compared to earlier comprehensive sanctions (SCR 2013a, 2–3). The institutional framework for sanctions consists of UNSC resolutions, sanctions committees and panels and/or groups of experts or monitoring groups assisting these committees, which thus form an established practice of the UNSC. Sanction committees are subsidiary organs of the UNSC that administer sanctions regimes. Panels and/or groups of experts help these committees by monitoring and reporting (*ibid.*, 6–8). The main objectives of UNSC sanctions are “conflict resolution, non-proliferation, counter-terrorism, democratization and the protection of civilians, including human rights” (*ibid.*, 3–5), and in the case of South Sudan, “to support the search for an inclusive and sustainable peace in the country”, according to Resolution 2206 (2015).

The international community has, in this way, sent a message that committing mass atrocity crimes is not acceptable (see also Wilson & Yao 2018, 128–131), and “Leaders responsible for such atrocities, at the very least, should not be welcome among their peers” (UNSG 2009, para. 57).<sup>24</sup> It may be that sanctions do not stop violations relating to R2P, but they may signal a willingness to use other more coercive measures (UNSG 2009, para. 57). However, sanctions should be such that they do not harm civilians, but affect only those responsible (UNSG 2012, para. 31). Imposing targeted sanctions on states and non-state entities, including individuals who represent a threat to international peace and security, was an innovation by the UNSC (SCR 2013a, 8). Earlier comprehensive sanctions were criticised for being “morally problematic” and ineffective, especially when thought as a response to atrocity crimes (Welsh 2015, 112–113).

Applying sanctions for mass atrocity prevention means holding individuals accountable for grave violations of international human rights law and international humanitarian law, including perpetrators of genocide, war crimes, crimes against humanity, and ethnic cleansing. The UNSC has been active in applying targeted sanctions against such individuals, thus showing its growing humanitarian concerns and how this is closely related to the work of the ICC (Farrall 2016, 655, 657). This development has also been in line with the UNSC’s increasing commitments and activities to protect civilians and strengthen

23 About the history of sanctions in the League of Nations and at the UN, see Wilson and Yao 2018, 131–134.

24 Sudanese President al-Bashir has a Warrant of Arrest: “Suspected of five counts of crimes against humanity, two counts of war, and three counts of genocide allegedly committed in Darfur, Sudan. Not in ICC custody” (ICC 2017). However, African ICC members and non-members have not arrested him under the ICC warrants, despite ICC protests (Schiff 2016, 308). However, in April 2019, al-Bashir was forced from power in a military coup, and was arrested. According to BBC News (2019), it is not known what will happen to al-Bashir.

its protection agenda. Also in the protection agenda, the PoC, was complemented by the R2P agenda by accepting Resolution 1674 (2006). The agendas of PoC and R2P, or their overlapping agendas, have signified a need to make sanctions more precise to address a variety of civilian abuses during conflicts (dos Reis Stefanopoulos & Lopez 2014, 51–52).

Targeted sanctions refer “to measures such as asset freezes, travel bans and arm embargos, for the purposes of ending conflicts, promoting peace processes, protecting civilians, protecting human rights, controlling terrorism, preventing from developing and acquiring weapons of mass destruction” (Welsh 2015, 113; see also Farrall 2016, 657–658). As meaningful from the point of view of atrocity crime prevention, Welsh (2015, 113–114) names four targeted sanctions, namely arms embargoes, financial sanctions, trade restrictions, and travel restrictions. As a practice for mass atrocity prevention, targeted sanctions aim to “change the behavior of potential perpetrators, by denying them both the means to commit atrocities and other goods they personally value” (Welsh *ibid.*, 113).

According to dos Reis Stefanopoulos and Lopez (2014, 53), the sanctions regime in Libya is an example of a protective sanctions regime. With Resolution 1970 (2011), adopted unanimously, the UNSC authorised arms embargo, travel bans and asset freezes, established the sanctions committee, and referred “the situation in the Libyan Arab Jamahiriya since February 15, 2011 to the Prosecutor of the International Criminal Court”. These were linked to R2P for the first time. However, the way it was implemented was not as it should have been. As Ros Reis Stefanopoulos and Lopez (2014, 53–56) estimate, it prevented similar action from being taken in the Syria case. The sanctions regime imposed on Côte d’Ivoire (Ros Reis Stefanopoulos and Lopez 2014, 57, table 2.2; 56, 58). showed the use of targeted sanctions to protect civilians, with R2P to legitimise the use of force if sanctions were not enough to stop mass atrocities (see also Wilson & Yao 2018, 143–145). It has been argued that R2P when concentrating on human security and protection of civilians actually widens the legitimate use of force for protecting civilians. There is a paradox in sanctions, as they are used to limit the state’s use of force (like in South Sudan), while at the same time they widen the scope of international society to use force when a state (in this case, South Sudan) is not upholding norms (Wilson & Yap 2018, 143–144). However, this use of force is for the collective good (Knudsen 2015; 2018a) and implies a new paradigm of using force. Sanctions belong to the means of international society to prevent and respond to mass atrocities.

R2P language was not used after 2011 in this sanctions regime as such, although the UNSC wanted to refer earlier resolutions on the protection of civilians and international law. The UNSC authorised targeted sanctions with Resolution 2206 (2015) “in order to support the search for an inclusive and sustainable peace in South Sudan” with travel bans and asset freezes using R2P language and reiterating that there is “no military solution to the conflict”. Before this resolution, the possibility of targeted sanctions was discussed over the course of several months (SCR/mf 2014a), and in August 2014, the UNSC adopted a presidential statement (S/PRST/2014/16) considering “all appropriate measures, including

targeted sanctions against those who undermine the South Sudan peace process” and this “in consultation with relevant partners, including IGAD and the African Union”. Better coordination and cooperation between the UNSC and regional organisations could make sanctions regimes more effective and give them a better record, but Council members, especially the P5, should be consistent in their commitments and not undermine a UN sanctions regime. If they are consistent and united, a signal is clear (SCR/mf 2014b, 2), and of course, this works the other way around.

There are policy lessons on the use of sanctions as a practice for mass atrocity prevention. Farrall (2016, 667) argues that they should be carefully planned not to cause more harm than good; they are at best a part of long-term conflict prevention and resolution strategy with other practices available under Chapter VI and VII and VIII – as is suggested by the UNSG (2009). Measures should be transparent, consistent and accountable; aims to need to be clear (see also UNSG 2012, para. 31) so as not to mix overlapping agendas further.

The UNSC has used R2P language in its sanctions resolutions since 2005. It could be argued that using sanctions to enforce R2P, and holding individuals responsible for serious violations of international human rights law and international humanitarian law, strengthens the ICC (Farrell 2016, 688). Welsh (2015), Farrell (2016) and Lopez (2013) estimate, however, that in spite of the improvements, the results from using sanctions are mixed. The Security Council, in its research report, “Can the Security Council Prevent Conflict?” (2015, 15), concludes much the same: “There is often considerable ambiguity regarding how sanctions are meant to reinforce other aspects of UN engagement, such as peacekeeping, mediation or peace-building”. Dos Reis Stefanopoulos and Lopez (2014, 59) state that success for sanctions could be measured to the extent that targets have changed their behaviour as specified in the UNSC resolutions. However, sanctions regimes could be estimated to be a signal of improper behaviour and reflect solidarism (see Wilson & Yao 2018).

No strategy to fulfil the R2P “would not be complete without the possibility to use collective enforcement measures including sanctions or coercive military action in extreme cases [...] under paragraph 139” (UNSG 2009, para. 56). As stated and discussed, UN peacekeeping operations need consent of the host state. As such, they fall under pillar II and should be distinguished from pillar III practices. When they are “mandated under Chapter VII to protect civilians, peacekeeping missions may use force as a measure of last resort situations where civilians are under imminent threat of physical harm” (UNSG 2012, para. 16).<sup>25</sup>

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25 Trends in peace operations 1947–2013, see Bellamy & Williams 2015; also Sheeran 2017.

### 3.3.5.3.2 *The use of force*

Only the UN Security Council can authorise the use of force, under Chapter VII, Article 42. This can have many forms: “establishing security zones, the imposition no-fly zones, military presence on land or sea for protection or deterrence purposes or other ways” (UNSG 2012, para. 32).

Safe areas represented a new approach to humanitarian space in the 1990s, but since the failures in Bosnia and Rwanda, they were more or less forgotten. Nowadays, however, they are gaining a new impetus in their relation to R2P. Safe areas could be a quick way to respond to mass atrocities and could provide opportunities for acting if no political will can be found for a peace operation. Safe areas could be defined as “operations undertaken by international actors that have the primary purpose of providing direct protection to civilians and internally displaced persons (IDPs) within a state’s borders in a temporary and designated geographic area” (Orchard 2014, 55). The difficulty with this is that the only people who could be protected are those who reach these areas (Bellamy & Hunt 2015, 1290–1292). UNMISS did this in South Sudan; as Holt and Berkman (2006, 3) describe, pillar III peace operations with civilian protection mandate infer that “a desire for consent, impartiality and limited use of force take a back seat to the immediate goal of saving lives”.

This has once more to do with the difference between PoC and R2P operations. PoC “is an operational mandate provided by the UN Security Council to peacekeeping operations deployed with the consent of the host state” (Willmont & Mamiya 2015, 382; see also Williams 2016). R2P “posits a set of principles for strategic action on the part of the international community where a state is unable or unwilling to protect its population” (Willmont & Mamiya 2015, 382). What then does a pillar III peace operation mean? It means a non-consensual use of force to protect civilians as a timely and decisive response under Chapter VII of the Charter. However, this is not the only definition of a pillar III peace operation.

Peace operations are increasingly mandated in environments where there is no peace to keep (Bellamy & Hunt 2015; SCR 2016a; Smit 2016) in fragile and complicated conflict environments. This has meant that there has been a so-called “robust turn” in peacekeeping referred already in the Brahimi Report (UN 2000). Robust peacekeeping could be defined to be situated between traditional peacekeeping (the use of force only for self-defence) and peace enforcement. The tactical level of peacekeeping is different from operational or strategic-level peace enforcement. The level makes the difference (Bellamy & Hunt 2015; Tardy 2011; Karlsrud 2015).

This robust development in peace operations has been criticised. Their political acceptability and realisation should be asked for, and this is not the right way to try to fill “the creditability gap”, as this robustness was the response to the failures in Rwanda and Srebrenica as Tardy (2015) argues. The UN peacekeeping operations in the Central African Republic (CAR), Democratic Republic of Congo (DRC) and Mali, which were given in 2013, have intensified the use of force in their mandates and could be said to have meant

a new era of UN peace enforcement. The UN is now finding itself in a situation where it is bordering on peace enforcement. This has established a situation in which the doctrine and current practices of UN peacekeeping do not match (Karlsrud 2015; also Mateja 2015).

Mateja (2015) argues that the enforcement of peacekeeping also means “the enforcement of political solutions through support of a government’s state-building ambitions and its attempt to extend state authority in the midst of conflict”. For the first time, these mentioned peace-enforcement mandates ordered use to “neutralise” or “disarm” identified groups; enemies were specified or listed, and perpetrators were named (Karlsrud 2015; see also Mateja 2015). However, this follows exactly what Welsh and Sharma (2012) have argued – that mass atrocity crimes prevention “requires a willingness *not* to treat sides as equal”. This changes all peacekeeping principles: consent, impartiality and non-use of force (Mateja 2015, 366).

Pillar III and the use of force has been the most controversial issue in R2P and raised objections which have affected the whole discussion of R2P. Morris (2016, 201) suggests avoiding the excision of its “non-consensual, coercive military aspects” as the UNSC, in any case, would have the opportunity to resort to force because of the UN Charter. This would reduce ambiguity regarding R2P but not solve the related problems. The UNSG (2015a, para. 10) has set the quest of political settlements as a priority for the UN’s peace operations. This is seen as the UNMISS objective as well; only a political solution to the South Sudan conflict is possible.

The Brazilian initiative, responsibility while protecting, (RwP) (UNSG 2012, para. 49–53), after the Libya case, was meant to discuss the criteria and greater accountability for the UN-authorized military operation (see Stuenkel 2016; also Gallagher 2014). RwP has been described as an important diplomatic initiative, but its broader framework is the debate over the use of force by the UNSC. It has taken “the political discussion about the ethics of humanitarian intervention to a new level” as Stuenkel (2016, 631) argues.

The Brazilian initiative was meant as an addendum to R2P, not as a substitute. RwP’s main ideas relate to practices of the use of force (Stuenkel 2016, 624–625), which remind of those principles suggested by the ICISS (2001, 4.10–4.43) but rejected by World Summit in 2005. The idea is to limit the use of force and see the three pillars of R2P strictly in sequence; other means should be used first, the use of force is the last resort (see Avezov 2013).

It is argued that the RwP has shared views on how to face mass atrocities (Avezov 2013). RwP supporters see it as strengthening accountability when using force, while opponents see it as an attempt by those who, together with China and Russia, want to hinder intervention (*ibid.*, 1). Moreover, while R2P stresses the limits of state sovereignty, sovereignty as responsibility, RwP stresses the international community’s ability to bypass sovereignty in certain situations when there is a need to protect civilians. Thus, RwP’s attitude towards the collective responsibility to protect populations by force if necessary is different than in R2P.



The HIPPO Report (UN 2015) set recommendations for peace operations, while this need was recognised 17 years after the Brahmini Report (UN 2000) was delivered. The report (UN 2015, 10) recommends four essential shifts in peace operations. *Firstly*, political solutions are to be the primary solutions; *secondly*, all peace operations must be flexible in a way that they are best possible ways to meet needs, not standard solutions; *thirdly*, the UN must strengthen its partnerships, and *fourth*, the Secretariat must pay more attention to what is happening in the field, and peace operations should be more people-centred.

The panel (UN 2015, 11–13) identified four approaches to how this change is going to happen. Firstly, conflict prevention and mediation must be stressed. Secondly, protection of civilians is a main obligation of the UN, while expectations and capability must converge, meaning that protection mandates must be realistic and linked to political approaches. Thirdly, in the use of force, clarity is needed, and counter-terrorism operations should not be undertaken, while “Extreme caution should guide the mandating of enforcement tasks to degrade, neutralise or defeat a designated enemy. Such operations should be exceptional” (ibid., 12) – since the UN does not wage war. The panel confirms the traditional core principles of peacekeeping and “Yet, those principles must be interpreted progressively and with flexibility in the face of new challenges and they should never be an excuse for failure to protect civilians or to defend the mission proactively” (ibid., 12). Finally, political sensitivity and alertness are needed to sustain peace, meaning if no peace agreement is achieved, the process should continue to reach that end (ibid.).

The panel clearly establishes that peace operations cover conflict prevention, peacekeeping and peace-building (Smith 2016; SCR 2016a). Peacekeeping operations face the problems above related to R2P and PoC. UN peacekeepers are operationalising both the R2P and PoC agendas, while the UN needs to clarify how its peacekeepers should do their job in these situations (Williams 2016, 540; see also SCR 2019).

The use of force under Chapter VII resolutions is qualified with a civilian protection mandate. Usually the wording “all necessary means” or “necessary action” are used, but there are other formulas in use. Thus, the terminology could be imprecise, and it is difficult to know what it means (Sheeran 2017, 368–369; Willmot & Mamiya 2017, 388; 391–395). However, the use of force to *protect civilians* is a significant development – it suggests that the most legitimate use of force is for the protection of civilians. It also means a move away from state-centric international peace and security to a more people-centred approach (Sheeran 2017, 368; Willmot & Mamiya 2017, 376).

Willmot and Mamiya (2017, 397) argue that this process has not been revolutionary but evolutionary and has taken place through UN peacekeeping. The authorisation of the use of force to protect civilians within the UN peacekeeping context has become a legitimate action to show the UNSC’s powers, which they call “a new paradigm for the use of force under the UN Charter” (Willmot & Mamiya 2017, 376). So there are different discourses on the use of force at the UN and the UNSC.



There are divisions in the UNSC, and it might be too much to expect consistency (Schmidt 2018). The UNSC has a discursive function, and as specific resolutions would be a good thing, the resolutions adopted are better than no resolutions at all (Johnstone 2017, 229). Johnstone (*ibid.*, 249) has aptly described this discursive function when stating that the UNSC is a body or “a place where claims about appropriate international behavior and the requirements of international law are proffered, challenged, defended and criticised. In the discursive process, the rules of international life are interpreted, reinterpreted, and on occasion rewritten”.

### 3.3.5.4 *Chapter VIII of the Charter*

#### 3.3.5.4.1 *Regional cooperation*

The UNSG (2009) refers under pillar II (para. 37–38) and pillar III (para. 50–51) to possibilities for cooperation and dialogue under Chapter VIII of the Charter, “Regional Arrangements”. Since the 1990s, Chapter VIII has been given more attention. The UNSG, in his report “An Agenda for Peace” (UNSG 1992), stressed the role of regional organisations and preventive diplomacy, early warning systems, peacekeeping, and post-conflict peace-building. The concept of a global-regional partnership was developed for maintaining international peace and security (SCR 2011a, 2). In “Supplement to an Agenda for Peace” (UNSG 1995), the UNSG defines “consultation, diplomatic support, operational support, co-deployment, and joint operations” as means of cooperation between regional organisations and the UN. The UN and the UNSC have relations with the EU and OSCE, the UNSC has especially developed relations with the AU (SCR/mf 2013f, 5).

The Kenya post-election crises were the first time when the UN and regional actors, the AU, interpreted the crises from the point of view of R2P. The UNSG, in his report (UNSG 2011, para. 3), “The role of regional and sub-regional arrangements in implementing the responsibility to protect”, refers to the World Summit Outcome Document where regional and sub-regional organisations and arrangements were considered useful for the prevention of R2P crimes in relations to pillar III. However, regional and sub-regional arrangements could encourage states under pillar I to see their duties related to international conventions and to recognise problems in their societies before the outbreak of conflicts, violence and mass atrocities (UNSG 2011, para. 17). As responsibility also implies accountability, it strongly relates to the ICC since it is developing a system of international justice which depends on complementary national judicial systems (*ibid.*, para. 19).

The UNSG also states that although R2P is a universal principle, institutional and cultural differences from region to region should be considered (UNSG 2011, 8). Local knowledge held by regional organisations is valuable when preventing and halting mass atrocities as they know their crises and often have similar cultural frameworks (Carment, Landry & Winchester 2016, 336; Weiss & Welz 2014, 889). Regional organisations have

become more important to the UN for several reasons (SCR 2011a). *Firstly*, the UN and the UNSC is overburdened in peacekeeping and protection duties. As the Security Council Report (2017, 5) notes,

Council members often note that they are overwhelmed with the burden of managing so many existing crises, including overseeing complex peace operations and dealing with the security, humanitarian and other consequences of ongoing conflicts in which peace operations are not deployed. Some Council members express weariness, almost exhaustion, at having to manage so many conflicts simultaneously.

*Secondly*, regional organisation have the best understanding of “local” conflict dynamics – as most conflicts are regional conflicts, although peace operations have a single-state mandate (Mateja 2015). This makes them “more responsible stakeholders in peacemaking and peace enforcement within their locale” (Aning & Okyere 2016, 355; see also Piccolino & Karlsrud 2011), and *thirdly*, their opinion is considered more when deciding what to do in certain situations. This was evident in Libya; the support of the League of Arab States and the AU was decisive in the measures taken (Aning & Okyere 2016, 355–356; also Bellamy & Williams 2011; Piiparinen 2012b), while in South Sudan, the AU stance has been often referred to (see Ch. 4). However, as Weiss and Welz (2014, 889) note, regional organisations can also have interests in local and regional conflicts, and they may put their own interests first instead of lasting solutions and thus hinder or further complicate e.g. the mediation or peace process in general.

A large number of UN peacekeeping operations are in Africa (see UN 2017; SCR 2011). The AU can contribute to R2P by preventive diplomacy, mediation, peacekeeping, and peace enforcement. There have been some positive signs, but at the same time, the record is mixed (Murithi 2016; see also Piiparinen 2012b). Although there is, according to AU Charter Article 4(h),<sup>26</sup> an idea “from non-interference to non-indifference: the AU transition to responsible sovereignty” (Aning & Okyere 2016, 356), there are still different understandings of sovereignty (see Mwahasali 2010; Geldenhuys 2014; Pergantis 2014). For example, there have been times when the governments of Sudan and South Sudan have been skeptical of accepting the presence of UN troops. Aning and Okyere argue (2016, 363) that the principle of non-interference turned R2P on its head by stressing states’ point of view rather than that of potential victims. There is again the question of sovereignty or human rights. However, Aning and Okyere (2016, 367) argue that Article 4(h) and R2P not only represent “a normative shift away from the old idea of sovereignty as non-interference”, but also a process of stressing human protection at the AU (see also Abass 2012, 218–233; AUCISS 2014). This relates, again, to an understanding of how pluralism and solidarism exist at the same time in international society.

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26 The “Ezulwini consensus” means that although the AU is the main tool for peace and security in Africa, the Security Council approves possible interventions, although approval could be given “after the fact” if the situation needs urgent action (Bellamy 2009, 80; African Union 2005, 6; also Tunamsifu Shirambere 2014).

The state-centric approach to mass atrocity prevention is problematic in Africa when considering the nature of African states and their institutional weaknesses and characteristics (Aning & Okyere 2016, 364). Africa has not always been at the centre of UNSC action, but Africans, in any case, must rely on the UNSC for protection. However, as Abass (2012, 232) argues “Africans clearly reserve for themselves the right to go it alone, if and whenever they deem fit”.

The UN and Africa’s relationship has been characterised by paternalism and partnership. Africa is now developing in such a way to be considered an equal partner in the international issue of human protection. However, not all African leaders take the AU seriously; although they have signed the Constitutive Act of AU, they continue to commit mass atrocities with impunity, which contributes to conflicts with the UN and the ICC. In spite of this, it could be said that an UN–AU partnership is developing in human protection interventions. There has been e.g. in Darfur a joint human protection mission, a hybrid AU–UN force. Although there are problems in AU–UN relations, it would be very important to develop a working partnership since approximately 60% of the UN’s peace, security and human protection activities are happening in Africa (Murithi 2016, 238–245)<sup>27</sup>.

There have been efforts to improve the joint work between the UNSC and AU Peace and Security Council (PSC) to prevent and end violent conflict in Africa, but it takes time to build a real partnership because of the lack of resources. More time, and member-state energy would be needed as well as a clearer framework for cooperation between the UNSC and PSC. At the UNSC, the P5 in general supports the cooperation, but some issues have negatively affected the relations between AU and some Council members. These problems relate to “human rights, impunity and governance” (SCR 2011A, 31–32).

Ban Ki-moon (UNSG 2012, para. 18) has stated that the aim is that recourse to pillar III will become less required as states get assistance from the international community under pillar II when and if needed to protect their populations and are thus able to take care of their pillar I responsibilities. He continues that “responsibility is an ally of sovereignty” and sovereignty is to be defined as responsibility. Breakey (2014, 208) pays attention to a critical issue; pillar III has a strong impact also on pillar I, and thus R2P strongly affects the normative state of international society. It could be concluded that “forceful measures” are not limited to pillar III, while pillar III includes measures other than the use of force. As such, there is no “one-size-fits-all” approach (Bellamy 2012), yet, a need for consistency remains. The UN Charter has given the UNSC a “wide degree of latitude” (UNSG 2012, para. 54) to decide what to do even in the most difficult situations.

As a conclusion for this chapter, it could be stated that existing practices at the disposal of the UNSC have taken on *a new meaning in the established framework of the R2P*. The UN, the UNSC and the ICC – as the secondary institutions of international society –

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<sup>27</sup> There is also the Ad Hoc Working Group on Conflict Prevention and Resolution in Africa, established by the Presidential Statement S/PRST/2002/2. See also <https://www.un.org/sc/suborg/en/subsidiary/africa-ad-hoc-wg>.

constitute R2P and contribute to international peace and security. Pillars I, II and III are discursive practices of R2P, and they may reproduce or change the primary institutions of human rights, sovereignty and great power management which are at the same time the basic principles of R2P. The important question is whether these discursive practices of R2P are R2P-competent practices, meaning such practices which construct or contribute to a collective response to mass atrocities or cosmopolitan consciousness (see Ralph & Gifkins 2017). These discursive practices of R2P and social practices of the UNSC are mutually constitutive. This will be discussed in Chapter 4.

## 4 South Sudan conflict: the UNSC practices of R2P

Our apartheid system was not very different from theirs. They were exploited, subjected to slavery, abuse and discrimination, not only on racial, but also on religious grounds. Their oppression was systematic and institutionalized. Their struggle lasted almost 50 years.

Desmond Tutu<sup>1</sup>

The history of the Southern Sudan conflict is long and grim, as Desmond Tutu describes in the quote above. In 2005, the Comprehensive Peace Agreement (CPA) ended an over 20-year-long civil war in Sudan between regimes in Khartoum and the southern rebels' group, Sudan People's Liberation Movement/Army (SPLM/A). During the interim period, 2005–2011, Southern Sudan had a semi-autonomous Government of Southern Sudan (GoSS), which was under SPLM/A control. South Sudan got its independence in 2011, and in December 2013, fighting started between President Salva Kiir and Vice President Machar. In August 2015, the parties signed a peace agreement, "Agreement on the Resolution of the Conflict in the Republic of South Sudan" – ARCSS.

In Sub-chapters 4.1–4.3, the South/ern Sudan conflict is discussed in some detail to contextualise the conflict since these experiences are important from the perspective of how events were later interpreted. In Sub-chapter 4.4, I present how the research material has been analysed (see also Sub-chapter 1.3) and then proceed to the analysis, in Sub-chapters 4.5–4.8, the analysis is presented in four substantive categories: state-building, protection of civilians, sanctions regime, and peace agreement, with each reflecting different pillars of R2P, discursive practices of R2P constituting the (social) practices at the UNSC. They are analysed in their normative framework taking into account ethical considerations, moral choices and ethical reasoning.

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<sup>1</sup> Tutu 2016, xiii.

These Sub-chapters, 4.5–4.8, reflect how the UNMISS mission mandates have changed and thus reflect changes in the South Sudan conflict and the corresponding UNSC practices. Moreover, they reflect the idea of how R2P pillars I, II and III can be used simultaneously, in different order, not in sequence. Different (discursive) practices can be found in these substantive categories, thus constructing them. Further, these categories reflect an inherent aspect of the UN Charter in how Chapters VI and VII involve an ever-strengthening range of measures available to the UNSC (see Koskeniemi 1991).

Sub-chapter 4.5, *State-building*, discusses several UNMISS mandates, including Resolution 1996 (2011), which establishes the UN mission in South Sudan; 2046 (2012), concerning relations between Sudan and South Sudan and how to resolve unresolved issues; 2057 (2012), which renews the UNMISS mandate; 2109 (2013), which extends the mandate; 2132 (2013), a mandate that increased the military and police capacity in December 2013 in response to conflict that broke out. These reflect the aim of building a responsible, sovereign state with a strong state-building capacity that protects civilians and upholds the human rights mandate.

Sub-chapter 4.6, *The protection of civilians*, follows Resolution 2155 (2014), which redefined the mission priority once fighting broke out. The mission mandate was refocused from state-building to protection of civilians, humanitarian access and human rights verification and monitoring; Resolution 2187 (2014) was the mandate renewal for the next six months.

Sub-chapter 4.7, *A sanctions regime*, is discussed as the fighting and grave human rights violations continued, and there were alleged crimes against humanity, war crimes and violations of international humanitarian law. Resolution 2206 (2015) established a sanctions regime for South Sudan, and the Resolution was adopted unanimously. Resolution 2223 (2015) renewed the mandate for the next six months; Resolution 2241 (2015) changed the UNMISS mandate to support implementation of the “Agreement on the Resolution of the Conflict in the Republic of South Sudan”. Sub-chapter 4.8 discusses *the peace agreement*, and how Resolution 2252 (2015) increased the level of UNMISS troops and police to better implement the mandate.

## 4.1 A long road to statehood: two civil wars – 1956–1972 and 1983–2005

In the nineteenth century, southern parts of Sudan were underdeveloped and ruled by “administrative and military tribalism”, in which the people were treated as “at best second-class citizens, and at worst as commodities” (de Waal 2014, 350). In 1956, Sudan got its independence from Britain and the Arab Muslim elite, who had had the power to spread Islam and the use of Arabic language throughout the entire country and had marginalised the Southern Christian elite (see Johnson 2016, 3; also Gerenge 2015).

The first civil war took place between 1955–1972 as southern leaders opposed the racist exclusion imposed by the northern government and demanded to be part of the



ruling class. The Addis Ababa Agreement in 1972, which ended the first civil war, was a compromise agreement in which the southern part of Sudan got political autonomy but not an autonomous state, which was their wish. Since the agreement had no monitoring or evaluation processes, it was no problem not to implement it (Sithole 2016, 228–230).

The second civil war, between the Government of Sudan and the Sudan People's Liberation Movement/Army (SPLM/A), started in 1983, and from 1986 onwards, they negotiated for peace and finally succeeded in 2005 when the CPA was signed. These two civil wars were related. Oil was found mostly in the southern area of Sudan (Abyei), which made peace negotiations difficult (see de Waal 2014; Rolandsen et al. 2015; Biar Ajak 2015; Gerenge 2015). Southern self-determination and refusal to accept Islamisation and Arabisation were the main issues before the CPA (see AUCISS 2014, 16). To summarise, the civil wars of 1956–72 and 1983–2005 were against the oppressive Khartoum regimes (Hutton 2014, 10).

One problem in Southern Sudan's conflict history is that the SPLM was the legitimate representative of the southern liberation movement, although it had serious internal problems, which were to be faced later. The SPLM got its position as it liberated South Sudan from Sudanese rule and got much of the political and economic power in South Sudan (Hutton 2014, 10). However, the liberation movement people themselves are not necessarily the best peace-builders, the best to negotiate and make compromises, since they are accustomed to fighting an armed struggle (see Johnson 2016, 30–33).

## 4.2 Comprehensive Peace Agreement 2005–2011 – the interim period

The CPA provided a chance for unity for Sudan to settle the question of national identity and governmental issues. The CPA was concluded between SPLM/A and Sudan's ruling National Congress Party (NCP). Other political and military opposition groups were kept out from the negotiations. Many southern groups were later integrated into SPLM/A but not without difficulties. This was seen later, particularly after independence (ICG 2014, 3).

The CPA was negotiated with the help of Intergovernmental Authority on Development (IGAD) Partners Forum/Friends' group with the so-called Troika (the US, UK and Norway). The AU, UN and the international community in the main supported this. The earlier Machakos Protocol (2002)<sup>2</sup> was included in the CPA, giving the people of South Sudan the right to self-determination and a referendum to decide their future. This was a delicate issue since the CPA made a united Sudan possible, while also allowing for the possibility of an independent South Sudan. de Waal (de Waal 2014, 353) asks what the CPA was for, "Was it a mechanism for national democracy or a stepping stone for the secession of the South?"

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<sup>2</sup> The Machakos Protocol made the negotiations possible for "governance and government". The different Naivasha protocols and annexes, collection of agreements, formed the CPA, which is actually a collection of agreements (Sithole 2016, 233–234, 237).

IGAD was a successful negotiator, as both President Omar al-Bashir and the SPLM accepted the CPA and recognised the connection between peace in Sudan and other regional states. Moreover, IGAD gave both parties equal treatment, although one was a state and the other a non-state actor (Sithole 2016, 238–241).

There were different reasons the CPA was finally achieved. Some have argued that the reason behind the international community's interest in these negotiations was the Sudan's People's Liberation Army's (SPLA) success in putting forward its Christian identity in opposition to the Islamist North.<sup>3</sup> This is said to have had an effect on the Bush administration's willingness to end the war and support the southerners. The other argument for the CPA is that it is a product of 9/11. Sudan's connections to different "terrorist" groups, together with the US's "war on terror", resulted in Sudan becoming a priority in the US's foreign and security policies, which also contributed to achievement of the CPA. Since the US pressured Sudan to achieve the agreement, it was not based "on the Sudanese people's free will" (Sithole 2016, 237). Sithole (ibid., 237–238) argues that the peace process ended as "an externally driven process" in which IGAD had a role. Nevertheless, the Troika and IGAD worked well together, which has been considered a valuable process (see ibid., 235–238).

Achieving the CPA was considered so important that the Darfur conflict (see e.g. de Waal 2007; Belloni 2006; Badescu & Bergholm 2009) in Western Sudan was neglected. Some have argued that the exclusion of negotiation processes for other rebel movements, political parties and civil society organisations meant that conflicts in other regions of Sudan intensified, as did the one in Darfur in 2005 (Sithole 2016, 243–245). Inclusiveness is an important aspect of peace processes. It should at least mean that all warring parties be included in the processes; better yet would be the inclusion of all actors. This question of inclusiveness-exclusiveness is also related to the issue of transitional justice (Melander 2016, 288).

The international community turned its attention to Darfur<sup>4</sup> and other existing conflicts, when it should have *still* been supporting the CPA process more – another example

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3 A narrative of war between Christian South was suppressed by Muslim North. This "North bad/South good" image helped, however, end the conflict and the CPA was achieved (Haken & Taft 2013).

4 The Darfur conflict began in 2002–2003. The UN only began to pay attention to Darfur in 2004, in Resolution 1547 (2004) calling for an immediate halt to the fighting in the Darfur region. It was discussed whether a genocide happened in Darfur or "only" ethnic cleansing. In Resolution 1564 (2004), the UNSC "Requests that the Secretary-General rapidly establish an International Commission of Inquiry on Darfur in order immediately to investigate reports of violations of international humanitarian law and human rights law in Darfur by all parties, to determine also whether or not acts of genocide have occurred, and to identify the perpetrators of such violations with a view to ensuring that those responsible are held accountable, calls on all parties to cooperate fully with such a commission, and further requests the Secretary-General, in conjunction with the Office of the High Commissioner for Human Rights, to take appropriate steps to increase the number of human rights monitors deployed to Darfur". In its report, the Commission (ICID 2005) "found credible evidence that rebel forces, namely members of SLA and JEM, also are responsible for serious violations of international human rights and humanitarian law which may amount to war crimes. In particular, these violations include cases of murder of civilians and pillage." The Commission also found that Government of

of situations being dealt with in incorrect order. There was no attempt to make the unity of Sudan more desirable, although there was the UNMIS (United Nations Mission in Sudan) to support implementation of the CPA. Not putting more attention on implementing the CPA also led to the conflict between two parties – NCP (northern parties) and SPLM/A (south) – becoming more intense. The Khartoum government and its armed opposition continued to be involved and be a part of Southern Sudan's conflicts. The International Crisis Group (ICG) speaks of “merging conflicts” in which regional actors play an essential role (ICG 2015a; ICG 2014).

The CPA has been estimated to be comprehensive “in name only”, as conflict zones in the north and south-south conflicts were mostly ignored (ICG 2015a, 25). Conflicts in the Three Areas – Abyei, South Kordofan and Blue Nile (see the map of South Sudan in Appendix) were on the CPA agenda, but little effort was made to meet these commitments. South-south conflicts were also not named, which meant conflicts were taking place inside the SPLM/A and between SPLM/A and other armed groups (AUCISS 2014, 20).

The fact that the CPA was not comprehensive became apparent after independence, since many crucial issues had not been solved prior to independence – such as oil, debt, infrastructural development, border, citizenship, and migration (see Sithole 2016, 249–254; UNSG 2011b). As SGSR Johnson said, the divorce was not complete (2016, 57–96). There was and continues to be a *border issue* in the north-south border area (oil- and mineral-rich area); there was and continues to be the *Abyei* issue, the status of the Abyei area, which was important to implementing the CPA; there was and continues to be the *question of citizenship* (see UNSG 2011b, ch. II). It is evident that these unresolved issues will take a great deal of time in the coming years, time which should have been put into the internal development of South Sudan and Sudan<sup>5</sup>.

The referendum did not take place in Abyei. The Representative of Sudan said in the UNSC meeting (S/PV.6478), “Needless to say, the Abyei issue is not merely a question of the demarcation of administrative borders on the grounds or of the division of resources or wealth. It is about addressing the future of the two largest ethnic groups in the region, the tribes of the Dinka Ngok and the Misseriya” and needs “a comprehensive approach of wisdom and reason” to have sustainable peace and a solution. In the same meeting, Mr. Deng

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Sudan's armed forces attacked deliberately and indiscriminately against civilians but no genocidal policies were found. With Resolution 1593 (2005), the UNSC decided to refer the situation in Darfur since 1 July to the ICC Prosecutor. With Resolution 1706 (2006), the UNSC expanded mandate of UNMIS to include Darfur to support the implementation of the achieved Darfur Peace Agreement (2006). R2P was explicitly mentioned in the Resolution, which was adopted by vote of 12, with three abstentions (China, Qatar and the Russian Federation). The African Union/UN hybrid operation in Darfur, UNAMID, was established by the UNSC through the adoption of Resolution 1769 (2007) under Chapter VII of the UN Charter and over the African Union Mission in Sudan (AMIS). The mandate has been renewed since, see <https://unamid.unmissions.org/>. For the chronology of events in Darfur, see <http://www.securitycouncilreport.org/chronology/sudan-darfur.php>

5 This development could be followed e.g. from the Security Council Report's publication *Monthly Forecast*, <https://www.securitycouncilreport.org/monthly-forecast/index.php?page=1>.

Alor Kuol, GoSS Minister of Regional Cooperation, referred to how the CPA has clearly set legal obligations of both parties with respect to Abyei. He saw two possible outcomes: to have a referendum according to the CPA so the people could decide, or transfer Abyei to the South by Presidential decree (S/PV.6478).

In UNSC Resolution 1997 (2011) (UNMIS withdrawal), the need was recognised for a transition from UNMIS to UNISFA<sup>6</sup>, the United Nations Interim Security Force for Abyei, and UNMISS. The African Union High-Level Implementation Panel (AUHIP) for the CPA proposed a referendum in October 2013 for the Abyei area to solve the issue, but one problem was who would be allowed to vote (the question of citizenship). The Dinka Ngok community held an informal referendum, the result of which was unanimous support for incorporating Abyei to South Sudan. An official referendum was rejected (see Sithole 2016, 253; also SCR/mf 2013c,d).

The African Union Commission of Inquiry for South Sudan (AUCISS 2014, 20) has taken the stand that the December 2013 conflict has its origins in mistakes made in the process, outcome and implementation of the CPA (see also Ylönen 2014). This is because it adopted the paradigm of liberal peace-building, which aims only to end the violence in the sense of “negative peace”. As such, “positive peace” – democracy and structural transformation processes – got limited attention during the interim period. Insufficient attention to democratic institution-building in the interim period and just after independence led to the conflict in December 2013, and as such, the institutions could not mitigate conflict which then led to violence.

However, as SGSR Johnson (2016) stated, it was difficult to build institutions in Southern Sudan, as the aim was to contribute to a coherent and united Sudan (see also UNSG 2010a). During the CPA negotiation process, the idea of “institutionalization before liberalization” was adopted and was meant to give time for the institutionalisation process. Although the institutions of Sudan were fragile, it was able to hold elections and a referendum which both the UN and AU considered free and fair. Evaluated from this viewpoint, the CPA succeeded at least to some extent (Sithole 2016, 247–248). The referendum was not supported by all parties; not even the UNSC was unanimous on this. An independent South Sudan might mean trouble and shake up the regional balance, but the US President held firm that the referendum should be held on time. Later, most

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6 There is a United Nations Interim Security Force for Abyei (UNISFA) authorized by the UNSC Resolution 1990 (2011) in June. UNISFA would, according to mandate, “monitor and verify the deployment of any Sudan Armed Forces, Sudan People’s Liberation Army or its successors, for the Abyei Area as defined by the Permanent Court of Arbitration, henceforth, the Abyei Area shall be demilitarized from any forces than UNISFA and Abyei Police Service”, “facilitate the delivery of humanitarian aid” and acting under Chapter VII, authorized UNISFA within its capabilities and its area of deployment to take the necessary means to e.g. “without prejudice to the responsibilities of the relevant authorities to protect civilians in the Abyei Area under imminent threat of physical violence” and according to mandate to protect UNISFA personnel, facilities, installations. UNISFA was mandated, in coordination with the Abyei Police Service, to “provide security for the region’s oil infrastructure”. UNISFA was first authorized for six months, but has been renewed with only a slightly different mandate ever since.

international bodies supported South Sudanese independence and wanted to see South Sudan as a functioning state, not least because of the oil (Johnson 2016).

In the referendum, 98.83 % of voters voted for secession from Sudan. This gave massive power to the “SPLM-SPLA patronage-coercion nexus”, as de Waal (2014, 358) calls it. He (2015, 95–100; 2014) argues that GoSS President Salva Kiir adopted a business plan to buy loyalty using oil money. After the CPA, Kiir and the SPLM/A leadership developed “a rentier militarized political-market place”. The CPA’s wealth-sharing provisions gave half of the Southern Sudanese oil money for the GoSS, and the rest for the Government of National Unity (Sudan), GoNU. According to de Waal (ibid.), secession meant doubling the GoSS oil money.

De Waal (2014, 354) estimates that for the SPLM leadership and its international supporters, like the US, self-determination was critical, more important than democracy and national elections. President Kiir’s strategy of “rewarding loyalty with the license to commit fraud” meant, according to de Waal, that South Sudan got its independence “as a kleptocracy” (ibid., 358). Corruption was more than a problem; it was everywhere, different corruption practices had been seen since 2005 among the SPLM leadership (see also Johnson 2016, 88–93).

Intra-southern Sudan violence was referred to regarding how people have experienced the time after the CPA, and “ways in which intra-southern structures and international approaches have created some of the current predicaments of peace and have contributed to the dynamics of ongoing conflict” (Schomerus & Allen 2010, 5). The main reasons for the southerners’ problems were said to be the Khartoum government or “tribalism”, but these issues were questioned. The new way to see local violence was to put the blame on local-level state institutions. However, Schomerus and Allen (ibid.) also express how building a government is as such an impressive achievement (cf. de Waal 2014, 2015), but these new government structures do not reach the majority of the Southern Sudanese. Despite their achievements, “neither GoSS nor the international agencies working in Southern Sudan have achieved what they set out to do during the Interim period” (see Schomerus & Allen 2010, 6; also Malan & Hunt 2014). Johnson (2016, 56) estimated that the *liberation curse* or the *oil curse* were reasons the GoSS was not able or willing to take the necessary steps.

As for the drivers of conflict and violence, Schomerus and Allens (2010) suggest there are competing structural approaches, meaning “violence can only be reliably suppressed through strong and reliable state structures, yet these do not exist or where they do, might be perpetrators of violence themselves. The government should decide what to do: to build the state or control violence” (ibid., 7). As for further problems in Southern Sudan, Schomerus and Allen (ibid.) see how people are treated more as objects than citizens, which is not in line with responsible and democratic state-building. Authority structures are unclear, governmental reform versus strengthening indigenous structures and seeing local conflicts as tribal ones is not helpful (ibid., 8; see also UNMISS 2012; UNMISS 2013). The tasks have been enormous; establishing government structures, providing services, education and

security may have been impossible aims (see also Copeland 2015; cf. de Waal 2014, 2015). Expectations of what could have been possible may have been too high. Of importance is how the situation is framed; narratives told of the situation suggest how it is thought to be resolved. It was also argued that, “in general, the international community missed what was going on in South Sudan” (Hutton 2014, 7). The other possibility is that it did not want to see what was going on and chose something else which proved to be impossible.

The international community and UNMIS were careful not to develop institutions in Southern Sudan too much, as secession was only a possibility, not the official direct aim (Johnson 2016). The UNSG (2010a, para 107) mentioned how the UN informally consulted different actors in Sudan and the international community to find out scenarios after the referendum. The UN saw that regardless of the referendum results, efforts should be made to build up and support the GoSS in its work. As such, the UN was “in partnership with the Government of Southern Sudan and in consultation with the Bretton Woods institutions and other relevant stakeholders, a capacity-building plan [...] with the core objective of assisting the Government to establish functioning and accountable institutions” (ibid., para. 108). In other words, the main task for the upcoming UNMISS had been established.

The international community saw Southern Sudan security and justice development *after the CPA* as a technical rather than political project. It failed to see the challenges involved, seeing capacity and capacity-building as the primary challenges. It did not notice what South Sudanese leaders were doing (see Copeland 2015). However, as de Waal (2014, 369) notes, the most powerful demand is for justice. “The language of human rights and accountability for crimes would be a powerful way of asserting basic human dignity and its demand in the public interest”.

#### 4.2.1 UNMIS – the United Nations Mission in Sudan

UNMIS Resolution 1590 (2005) was mandated in March 2005 to support implementation of the CPA. It first looked promising; there was peace to keep, and both parties supported the deployment of the operation and the UNSC, but many problems occurred (see Hansen 2015).

The UNMIS was withdrawn in July 2011 with Resolution 1997 (2011) when the UNMISS was established. Withdrawal was instigated by Sudan; there were problems in managing consent. The withdrawal was regretted by P3 at the UNSC, since it felt that the UNMIS would have been needed to keep its role in supporting regional stability, especially in Southern Kordofan and Blue Nile, where new security arrangements had been deployed in response to fighting outbreaks, the displacement of civilians, and an ensuing humanitarian crisis as Ms. Rice (the US) discussed at the UNSC meeting (S. PV/6579).

According to Resolution 1590 (2005), the UNMIS was established to support CPA implementation by monitoring and verifying the implementation of the Ceasefire



Agreement, assisting the disarmament, demobilisation and reintegration (DDR) programme regarding the special needs of women and child combatants. Together, the AU and UNMIS promoted understanding of the peace process, addressed the need for a national inclusive approach, including the role of women, towards reconciliation and peace-building, assisted in restructuring the police force, assisted in promoting the rule of law, protected human rights to combat impunity, carried out human rights promotion, civilian protection, and monitored activities, helping with the elections and referenda, helped with the return of refugees and IDPs, provided humanitarian demining assistance, contributed to protecting and promoting human rights in Sudan, and protected civilians with particular attention to vulnerable groups.

The UNMIS had a strong protection of civilians mandate under Chapter VII of the Charter. It was to ensure “the security of United Nations personnel, humanitarian workers, joint assessment mechanism and assessment and evaluation commission personnel” and “to protect civilians under imminent threat of physical violence” (1590/2005; see also Shesterina & Job 2016; Shesterina 2016).

The UNMIS was to support the CPA implementation, but as discussed earlier, it was difficult to know what there was to do in assisting the parties of the CPA. As the UNMIS also had a strong civilian protection mandate, it was “Reaffirming its resolutions 1325 (2000) on women, peace, and security, 1379 (2001) and 1460 (2003) on children in armed conflicts, as well as resolutions 1265 (1999) and 1296 (2000) on the protection of civilians in armed conflicts and resolution 1502 (2003) on the protection of humanitarian and United Nations personnel”, thus constructing the whole mandate from the human security perspective and refelecting “broader normative debates” (UN 2008, 16).

The operational concept for the implementation of the protection of civilians (UN 2008) was to be “protection through the political process” and “providing protection from physical violence” (tiers 1 and 2). Together with the “protective environment” (tier 3), this should be the basis from which the missions develop strategies to protect civilians (PoC) as each mission is deployed in a different political and operational setting, and missions have different mandates and capabilities and protection tasks.

To operationalise its protection of civilians strategy, “UNMIS has taken a number of measures in the field, including increased coordination mechanisms among all actors and improved synergies in information exchange and situational analysis, to understand the causes of civilian insecurity and develop joint planning, scenarios and contingency planning” (UNSG 2010a, para. 64). However, as Malan and Hunt (2014, 5) argue, the UN could not contribute to conventional security, human security, or justice in this post-conflict peace-building environment, and this was a serious problem just before the referendum. Human Rights Watch (2009, 13) evaluates grimly that in 2009, UNMIS was still “defining its civilian protection activities”.

Later, with Resolution 1706 (2006) UNMIS deployment was expanded to support the Darfur Peace Agreement and Resolution 1769 (2007) established by the United Nations-

African Union Hybrid Operation in Darfur (UNAMID), which meant for the UNMIS to be back to its original size. Resolution 1870 (2009) authorised UNMIS to support the Technical Ad Hoc Border Committee and parties in demarcating the 1956 North-South border. Resolution 1997 (2011) ended UNMIS, as mentioned earlier, according to Sudan's demand (see e.g. Hansen 2015).

The UNMIS mandate was meant to supporting the CPA and as such in a demanding environment. The hardest criticism was related to protection of civilians in the Abyei area and inter-communal conflicts. UNMIS had, however, very limited resources compared to its mandate activities, while there were problems managing consent with the host state and many problems made it difficult to fulfil the mandate. To succeed, there should have been a commitment to the political process and consent to the UN's role and presence (see Hansen 2015, 744–752; also Malan & Hunt 2014). Here too, the principles of pluralism and solidarism were intertwined.

### 4.3 Conflict narratives

Naming the political situation in Sudan and Southern Sudan after CPA *a post-conflict* state or environment has probably not been the right decision. The southern part of Sudan was thus considered a post-war *united and cohesive unity*, since it had overcome the difficulties in its struggle against the oppressive North. Moreover, since the situation was more peaceful, it allowed for the state-building process in a technical sense to develop the capacity of state institutions. There were efforts made and a willingness to help Southern Sudan, since a lack of development was thought to be the reason for violence and conflicts. Southern Sudanese elites had internal problems, and while President Kiir played a key role in building a post-CPA elite consensus (also de Waal 2014), after independence, growing contestation emerged against his leadership. An easy *government versus rebel narrative* does not pay attention to other relevant issues (see Hemmer & Grinstead 2015, 1–4).

Liberators won the confidence of the Southern Sudanese people and made them unite at the referendum. Unity among the Southern Sudanese was constructed based on their being different from Northern Sudanese and their opposition to Khartoum's attempts to homogenise Sudan; however, among themselves, Southern Sudanese are different. The differences are "cultural, religious, linguistic, ethnic, and racial". South Sudan's history has been one of a *victimhood narrative*, and this narrative was an effective force for unity in referendum (Jok 2011, 7–8). Jok (2011, 9–15) argues that these issues were enough to create a collective national identity so there could be an idea of "southerners"; it was not only a geographical issue, but something greater – the southern identity stood against all injustices made in history, from the colonial powers to the Khartoum government. However, Jok asks (2011), is it enough for a new nation? In any case, there was something to it. Nation-building is more than the physical construction of state institutions; the nation is not "a sum of its material possessions", the people are the most important, they are the

nation. Nations are constructed by considering people and their cultures and practices. This means putting the people first. This entails positive peace, human security and people-centred approaches, while, as discussed, mass atrocities are practices of human wrongs done to people. According to solidarist ES security discourse, there is a responsibility, a moral purpose, to do something about human wrongs (see Booth 1995).

A lot of research has been conducted about the risk factors in mass atrocities, notably e.g. in the UN “Framework of Analysis for Atrocity Crimes. A tool for prevention”. The UN lists eight common risk factors, and six specific risk factors, each with several indicators (UN 2014; see also e.g. Bellamy 2015, 19–37; 2015a). The UN (2014, 3) describes how

Prevention is on ongoing process that requires sustained efforts to build the resilience of societies to atrocity crimes by ensuring that the rule of law is respected, and all human rights are protected, without discrimination; by establishing legitimate and accountable national institutions; by eliminating corruption; by managing diversity constructively; and by supporting a strong and diverse civil society and a pluralistic media.

This is what South Sudan would have needed, and perhaps what the UN was aiming to build.

Graham Harrison (2016, 144–146) established five approaches to mass violence in contemporary Africa. *Firstly*, these “conflicts are embedded in contexts of longstanding violence, or situations where conflict is immediately a possibility”. *Secondly*, “conflicts are commonly trans-border”, implying e.g. that armed groups seek and get support from other countries, or the conflicts are about borders themselves – the last as an addition to Harrison’s approach. *Thirdly*, “conflicts are fluid”, meaning they have their own internal dynamics and are changeable. Harrison establishes how “warlords, rebels and politicians” can be seen as elites moving from the opposition to building governments. *Fourthly*, “conflicts are materially embedded”, meaning there is a need for resources to be “controlled, accumulated and deployed”, and some people get rich during conflicts. *Fifthly*, all conflicts arouse the interest of external actors: “peacekeeping, peace-making missions or humanitarian operations”, i.e. UN military deployments, African Union operations, NGOs, and private security companies. These have always been the means to approach mass atrocities; their success or failure depends on their involvement in a conflict, and as Harrison states, intervention is in this sense “a misnomer” (Harrison 2016, 146). The outcomes of operations do not always – if ever – go as planned. All these conflict elements can be found in the South/ern Sudan conflict.

The causes of civil war have been discussed a great deal, and Woodward (2007, 149–155) has summarised research results from the issue thus far. Two schools of thought address the “root causes” of a civil war, two competing interpretations. *Firstly*, the cultural argument emphasises cultural differences and political discrimination against minorities based on these cultural differences. Ethnic conflict is a derivative of this process, while ethnically or culturally pluralistic and/or divided societies are more conflict- and violence-

prone. However, these identities can be socially or politically constructed, meaning the differences are not as such the problem or source of conflicts, but rather how e.g. political leaders construct conflict in this way for their own benefit or purposes. Wars are fought and violence occurs over political consequences of cultural differences either per se or constructed on purpose.

This is also a prevalent conflict narrative in the South Sudan conflict in 2013. The *liberator narratives* of both the Dinka and Nuer/SPLM which originally united the Southern Sudanese people were changed to a *tribal narrative* between the SPLA (Dinka) and SPLM/A – in Opposition (Nuer) (Gerenge 2015, 97). This also reflects the “*government versus rebels*” narrative (see Hemmer & Grinstead 2015) between those loyal to the government and those loyal to opposition forces (ICG 2014; also Schomerus & Allen 2010). However, rebels are not a united group, as there could more than 20 armed groups with different loyalties to either side (Hemmer & Grinstead 2015, 4).

*Secondly*, Woodward (2007, 150) suggests an economic argument, since civil wars are caused by rebels wanting economic gains for both the leaders and their followers. In this argument, the driving force is “greed” as opposed to “grievance” in the ethnic conflict argument, especially when huge profits can be made from natural resources, as with South Sudan’s oil. The latter has been seen as the reason for what happened in December 2013: “Untrammelled greed, combined with the reckless decision to shut down national oil production, meant that by 2013 the South Sudanese government simply could not afford the loyalty payments to keep the system running, and it fell apart” (de Wall 2014, 349). This interpretation – that of kleptocracy being the reason for the conflict in December 2013 – has been questioned because it is too simplistic (Johnson 2016, 89). As such, there is a *narrative of “resource curse”* and “*corrupted elites*” (see also Bliesemann de Guevara & Kostic 2017, 14).

*Thirdly*, Woodward (2007, 151) presents the political-regime argument, in which civil wars exist because there are authoritarian governments and no democracy. Woodward argues (ibid.) that this is related to the cultural argument and the question of minorities.

How have the different actors framed the conflict of December 2013? For President Kiir, it was a coup d’état by Vice President Machar and troops loyal to him. Another version was that President Kiir decided to disarm the Nuer members of the Presidential Guard and they resisted; this is the version Machar and groups loyal to him have adopted (see Johnson 2016, 184–186). Nonetheless, the governing SPLM and its army, the SPLA, split following a long-developing political conflict and rivalry that turned into heavy fighting. President Kiir remained in power; he was in charge of the government and national army while a coalition of military commanders became the SPLM-in Opposition (SPLM-iO). The Peace Agreement (ARCSS) reached in August 2015 is based on power sharing between these two parties, but a working peace demands ways to avoid these binary narratives, as more parties are involved in the conflict than only these two (de Vries & Schomerus 2017, 333–339). The idea that there are two identifiable groups – the Dinka-dominated government and

the Nuer-dominated opposition – is inaccurate. However, the international media has presented the conflict as an ethnic war between Dinka and Nuer, and has become, in this way, more “understandable” of what has happened in South Sudan (Sørbø 2014).

How the conflict is framed shapes the narrative of what causes violence in South Sudan and how violence gets its meaning. As Bliesemann de Guevara and Kostic (2017, 14) argue, “narratives and frames do not only concern the coming-into-being and definition of problems (problematisation) but also the definition of policy contents, implementation and goals”.

Different actors can frame and narrate things differently – discursively and practically. However, competing understandings and following practices are not problematic as such (e.g. pluralist and solidarist practices) and can co-exist without interference or conflict. There are always many voices, many narratives, and the most convincing narrative – one way or another – gets its way into different “policies and programmes” (see Bliesemann de Guevara & Kostic 2017, 14).

The narrative of the political struggle between these two parties was chosen as the most powerful, and peace was sought to be achieved and settle issues between these two parties. Some have argued that just after the fighting in December 2013, one explanation became dominant: competition over political leadership fought along ethnic lines. Framing the conflict as “ethnic” or “tribal” because it was fought between two competing groups of Dinka and Nuer people served as a good explanation for what was happening (de Vries and Schomerus 2017, 334; also Sørbø 2014).

The Dinka-led government represented the sovereign power, while the Nuer-led SPLA-iO represented anti-governmental forces. This, in turn, suggested that all people in South Sudan belong to these two groups, and violence in the country is caused by this bifurcation. However, there are other kinds of violence in South Sudan like inter-communal violence, but the bifurcation has meant that most conflicts are interpreted according to this dichotomy (de Vries & Schomerus 2017, 334; see also Schomerus & Allen 2010).

De Vries and Schmerus (2017, 334– 335) argue that the international community has decided to deal with the government, see the opposition as it would represent all Southern Sudanese, see that all violence in South Sudan is connected to this conflict between the government and the opposition, and suggest a peace deal that focuses on these two parties. This, however, ignores the violence and oppression the South Sudanese experience every day as they seek to get their voices heard. They seek positive peace. This requires an understanding that peace-building is essentially a local process (de Coning 2013; de Coning et al. 2015) and provides an opportunity to conceptualise peace differently (MacGinty & Richmond 2013).

Nevertheless, human security requires state-building. Issues such as environmental degradation, humanitarian emergencies and large-scale conflicts need institutions other than traditional and local mechanisms. Building a legitimate and representative state could be the only way to address these issues. State-building is not, however, a technical process

but a political one and as such is an inclusive process (Haken & Taft 2013; see also Lee & Özerdem 2015). State-building and local peace-building are not contradictory projects; they support each other, which implies that national and local processes are not necessarily the same.

Supporting the government infers that the government that has committed atrocities can continue to do so. The international community, the UN, and the UNSC are in a tough position because, if they do not support the government, they are not welcome (sovereignty before human rights). Peacekeeping and peace-building need consent from the state, and states are the primary units of the UN. The idea of strengthening state authority is built in the UN system. If the UN discusses matters with other actors without the host state's approval, there can be problems with managing consent (see de Vries & Schomerus 2017, 335–336; Karlsrud 2015).

Both the legitimacy of the government and the opposition are widely questioned in South Sudan, and they are largely seen to be one and the same. Consequently, people do not see how the power-sharing peace agreement between these parties could resolve the problems South Sudan faces. This fight is the elite's battle. This “Manichean interpretation of the causes of conflict [helps] international actors focus their peace efforts on government and opposition” (de Vries & Schomerus 2017, 336).

The narrative that united Southern Sudan was “the quest for an independent South Sudan and preservation of the dignity of its people” and it was the most inspiring and unifying narrative (Piok 2017). What kinds of narratives would inspire optimism and unity among the people in a now-fractured South Sudan that would consider their religious, political and ethnic diversities? Narratives which could be important could be firstly, *the promise of security*; secondly, *participatory democracy* and thirdly, *a complete re-organisation and re-orientation* of the political system in South Sudan. As Kachuol Mabil Piok (2017) argues, “there has never been a modicum of meaningful moral authority ever embedded hitherto in this geographical political space called South Sudan”.

The Fragile States Index (FFP 2018) shows that South Sudan is the most fragile state in the world, and there have been no changes since the country gained independence<sup>7</sup>. In July 2011, independence was taken as a moment of hope, and for the first time in history, South Sudan could constitute its own government. Two years later, in 2013, also for the first time in history, the South Sudanese committed mass atrocities against each other. The mass atrocities committed “were beyond comprehension” (Johnson 2016, xxiii).

It is argued that R2P practices aim to construct a stable, moral state, a framework for preventing mass atrocities and putting the people first.

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<sup>7</sup> See Fragile States Index (FFP), <http://fundforpeace.org/fsi/country-data/>. South Sudan is ranked first in FSI Rank (178 countries), and Finland is ranked 178<sup>th</sup> (178 countries).

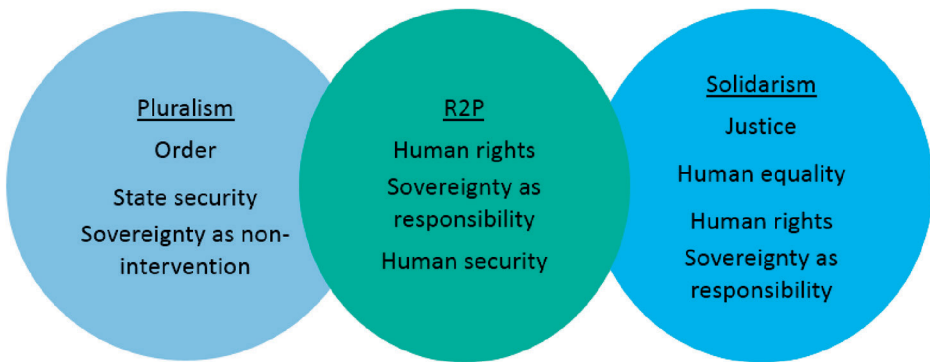


## 4.4 How to achieve normative goals

I analyse the reproducing practices of the UNSC, discursive practices of pillars I, II and III of R2P – which are mutually constitutive - and interpret how they are related to the primary institutions of international society: human rights, sovereignty and great power management.

The reproducing practices of the UNSC are analysed in the normative framework of R2P, within the framework of human rights, human security, and sovereignty as responsibility and whether these practices are R2P-competent by means of ethical reasoning. Here, ethical reasoning refers to the political debate within the UNSC. R2P-competent practices should create a framework to prevent mass atrocities; they should harmonise the competing norms of international society (see Ralph & Gifkins 2017) and display ethical skill (Frost 2009). I look at these competing norms in light of pluralism and solidarism, and have a possibility to analyse the situation in a nuanced way. As I have taken a position that pluralism and solidarism exist at the same time, this suggests that both aspects are to be found in the practices of the UNSC, implying contestation between norms, between pluralist and solidarist stands. As Weinert (2011, 40) stated, human security, human rights and sovereignty may be understood both in a pluralist and solidarist way; this interplay should be considered when analysing the material. Which practices imply pluralism, and which practices imply solidarism? How should they be interpreted? Identifying pluralist or solidarist commitments in practices shows what kind of framework they establish for preventing mass atrocities. This is relevant when trying to understand political problems. While providing an opportunity to understand how things are as they are, in a way, this is an attempt to avoid a Manichean interpretation. The UNSC practices of R2P imply possible norm contestation and competing claims at the UNSC, thus constructing R2P as it could be now understood. This is also how R2P may reproduce and change the primary institutions of human rights, sovereignty and great power management.

The ways in which pluralism, solidarism and R2P are related, are illustrated as below:



Pluralism and solidarism produce a normative framing of the possibilities and limits of international society. They frame moral possibilities in which order and justice are interlinked, where justice is defined through human rights, and order is defined through state security.

As a starting point, the UN and UNSC are moral agents with moral responsibilities. This adds a moral dimension to action, yet this moral dimension is often overlooked (see also Sub-chapter 1.3). This can happen e.g. by obeying rules. Following rules could be one of the best ways to overlook more suitable practices, or avoid criticism regardless of whether the aim has been achieved, or act according to a one-size-fits-all approach (Frost & Lechner 2016; also Gross Stein 2011; AUCISS 2014a, para. 169–174).

Decisions can thus be made that *do not fit the purpose*. However, a practice concept to avoid this should include the notion of “*how best to achieve normative goals*” (Ralph & Gifkins 2017, 632; see also Navari 2011). This is the core issue in relation to R2P, for which the aim is to *prevent and respond to mass atrocities*. Preventing mass atrocities, though, is not an easy task (see e.g. Sharma & Welsh 2015; Welsh 2016; UN 2014). The English School practice concept is normative, purposive and goal-oriented; these aspects of a practice should be considered, especially when thinking of UNSC practices.

As to when the UN and the UNSC display ethical incompetence, there can be negative outcomes in response to this (Frost 2009). However, is it, in fact, a question of ethical incompetence? Are the UN and UNSC ethically incompetent because they have not succeeded in preventing conflict and mass atrocities in South Sudan? Or is it something else?

Some have suggested that the UNSC has not been ethically competent. There is an ethical contestation (Frost 2009); the UNSC should be able to harmonise or solve this contestation to minimise the existing tension. Ethical skill is needed to see all this thorough. This resembles how the R2P has defined sovereignty as responsibility, in that human rights standards (standards which define the activity) “should play a role in determining the constitutive rules of sovereignty” (Karp 2013, 987). This would imply that the great powers, P<sub>5</sub>, consider human rights violations a threat to international peace and security – which they do. It also implies that R2P practices should have ethical coherence so they reflect the idea of “from deeds to words”, in which the deeds (practices) should imply the idea of what R2P is. This also suggests political responsibility: R2P demands a shift in the normative language of responsibility (Beardsworth 2015, 71–72).

Since the UN has been quite successful in normative development but not so successful in country-specific action, do different interpretations of sovereignty and human rights, especially by the P<sub>5</sub> (P<sub>3</sub> and P<sub>2</sub>), the great powers, mean unethical action? Or do different ethics, different moral frames, therefore simply produce different outcomes?

Ethical arguments can be used to uphold existing practices or change dominant practices and normative beliefs (Crawford 2002). Challenging old normative beliefs (“sovereignty as non-intervention”) and creating new normative-ethical standards (e.g. “sovereignty as

responsibility”) is not usually without difficulties. New normative beliefs and the practices that uphold them may be institutionalized (R2P pillars I, II, and III). This kind of change may happen without a normative consensus, since its effect could still be seen. There is no causal relationship between normative beliefs and norms other than the ethical arguments (Crawford 2002, 100–104; 85).

Reus-Smit (2008, 67–70) refers to *ethical reasoning as a practice* which makes political debate possible. Using ethical reasoning to interpret whether the UNSC practices are R2P competent means to analyse and consider the following issues in terms of pluralism and solidarism (see also sub-chapter 1.3):

- definition of the *moral agent* (ideography): who has obligations. Since these obligations can be a burden or empowering, it is a highly political issue. In this research, by definition, the UN, the UNSC and especially the great powers have obligations, since by definition mass atrocities as a threat to international peace and security belong to the mandate of the UNSC;
- *definition of the problem* (diagnosis) and *obligations*; “a process of mapping”. This has been as much a matter of constructing what happened, as much as it has been about collecting the facts. How was the situation in South Sudan seen during the interim period and right around independence, after the fighting started? How was the situation initially identified? What kind of problem did mass atrocities constitute (naming the problem)? How was it normatively evaluated? What can be done about the situation in South Sudan?;
- *definition of what to do, what is the right thing to do and what may work*. If we want to prevent mass atrocities and prevent human rights violations, then we have to prevent or end the support of the perpetrators, like the South Sudan government and armed groups; that would be the right thing to do. But does it work, is it politically possible, or is it wise if the aim is to develop a state capable of protecting its citizens? Regardless, the perpetrators need arms and recognition for their sovereignty. The great powers at the UNSC have often provided these (Crawford 2002, 430), as in South Sudan. The US is a penholder for South Sudan, while China has developed extensive economic interest in Sub-Saharan Africa, as in South Sudan (van der Putten 2015). If the perpetrators are blamed, it would be logical to see those who support them (Crawford 2002, 430–431).
- *definition of the principles which guide action* when responding to mass atrocities. There are *competing ethical principles*, and the UNSC and the P5 argue about these principles publicly. The prevailing circumstances define *the realm of moral possibility* (*context*). How the UNSC and P5 define the limits for moral action is important: e.g. pluralists and solidarists define them differently.
- *definition between capacities and obligations*. Capacities could be interpreted differently; they could be underestimated or overestimated in relation to obligations. This applies to South Sudan’s capacities to develop its country and the UNSC’s capacities to implement its mandates. Capacities could be under- or overestimated

to fulfil their obligations. Can South Sudan take care of its e.g. judicial processes to end impunity, or can the UNSC implement its mandates, uphold the missions, have enough resources?

As a general statement, responding to intra-state conflicts means a change in the moral framework of the UNSC, from states to international community (Marlier & Crawford 2013), approaching cosmopolitanism (Appiah 2006). A normative concern for mass atrocity prevention can be argued to be a universal concern (Kurtz & Rotmann 2016), as mass atrocities represent the most brutal crimes against humankind and human dignity (UN 2014). Ethical competence in the R2P framework means building and maintaining a cosmopolitan consciousness (Ralph & Gifkins 2017, 640), a solidarist international society.

## 4.5 State-building – the idea of a responsible sovereign state

### 4.5.1 Practices of state-building

When South Sudan got its independence and statehood in July 2011, it promised to pay special attention to “international human rights instruments and international humanitarian law, [...] the principles of the UN Charter, and the rights and duties affirmed in all relevant international rights instruments”. The leaders of South Sudan also agreed “to reflect international human rights norms in national structures and government institutions” as the “world’s newest democracy” (S/PV.6478, 11).

By February 2011, the UNSC (S/PRST/2011/4) had referred to the need for a comprehensive and integrated approach between “political, security, development, human rights and rule of law activities and addressed the underlying causes of each conflict” and how “national ownership and national responsibility are key to establishing a sustainable peace”. Furthermore, it was stated that peacekeeping operations to support national authorities should articulate peace-building priorities, i.e. “re-construction, economic revitalization and capacity-building constitute crucial elements for the long-term development of post-conflict societies”, underscoring national ownership and the significance of international assistance.

The UN had to decide how to approach an independent South Sudan by considering unresolved issues left after the CPA, as it had to be concerned with two independent countries: Sudan and South Sudan. The UNSG (2011b, para. 2) made outlines for the new peacekeeping mission, for its role in facilitating peace consolidation. The mission concept considered different principles outlined after the conflict. The challenge was to build national capacities, and this would be the task for the new mission “to support the new state in its political, security and protection challenges, creating its authority and environment for state-building and socio-economic development” (ibid., para. 37).

Since South Sudan lacks national capacity, all actors need to give their assistance “in accordance with Government priorities” (ibid., para 38). The UNSG recommended (ibid., para. 41) that under Chapter VI, the task for the mission would include “good offices and political support for peace consolidation”, support of the security sector reform and the rule of law, and <sup>8</sup> security aspects, including conflict mitigation and the physical protection of civilians”. In these, the task was to support GoSS in fulfilling its duties, i.e. “to support the Government in fulfilling its sovereign responsibility to protect civilians through strategic and technical military and police advice at the national and State levels as appropriate” and under Chapter VII, the mission would be mandated “to provide, within capabilities, physical protection to civilians under imminent threat of physical danger, including to use of force as a last resort when Government security services are unable to provide such security”.

The protection of civilians is the primary responsibility of the government (pillar I). The mission supports the government in fulfilling this task, “its protection responsibilities, under human rights and humanitarian law consisting of conflict mitigation, human rights and other activities such as advice to the SPLA and police service” as to how they should act “in accordance with international humanitarian law and human rights law” (UNSG 2011b, para. 44). The mission will also help local actors mitigate and resolve their conflict; if this fails, the mission would help government security forces ensure that they do what they should do in this respect. Furthermore, if government security actors are unable to protect civilians, under Chapter VII, it is “to use force as a last resort to protect civilians in imminent threat of physical danger” (UNSG 2011b, 45). The logic is solid.

The UNSG (ibid., 46–47) stated that this mandate is impossible without the cooperation of the government, and this mandate “creates high expectations, locally and internationally”. The mission should have “a strong capacity to communicate its mandate” and to reinforce the government’s sovereign responsibilities. This became evident later, when UNMISS faced difficulties both with the government and local people and had difficulties implementing its mandate and managing consent.

In May 2011, the UNSG further suggested (ibid., para. 80–83) a three-month technical rollover of UNMIS, since it was also necessary to have a new mission for a new state. The technical rollover was meant to mitigate relations between Sudan and South Sudan, as there were significant unresolved issues between the two states. Additionally, it meant that the UNSC was aware of existing problems the CPA had left behind.

The UNSC had various options for the new mission in South Sudan: follow the UNSG’s recommendation of a three-month rollover of UNMIS, end UNMIS, or start negotiations for the new mission mandate immediately. Both parties, Sudan and South Sudan, wanted a new mission, but for different reasons (see SCR/mf 2011b,c). The UNSC began negotiations for a new mission. Although it might have been good to have a three-

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<sup>8</sup> Security sector reform (SSR) has become an essential element and of critical importance in any post-conflict environment (see e.g. SCR/mf 2014d, 6). As well, rule of law has become part of mainstream discussion and action of the UNSC (see e.g. SCR/mf 2012a, 5–6).

month rollover of UNMIS to try to mitigate some of the difficulties, these were left to be negotiated later.

UNMISS was established with Resolution 1996 (2011) on 8<sup>th</sup> July as a Chapter VII peacekeeping operation with a focus on peace consolidation, state- and peace-building and the protection of civilians with early-warning and community-level conflict prevention<sup>9</sup>. The Resolution was adopted unanimously. South Sudan was in a new situation; it was born without a state (see Johanson 2016). South Sudan has often been called a failed state or a fragile state, which means to ignore the fact that a political foundation for the state was yet to be formed (AUCISS 2014a, para. 93) and as such, it was not a post-conflict society, either.

The UNSG spoke at the UNSC meeting in July 2011 (S/PV.6583,2) and discussed how the new country had tremendous challenges, stating that it was ranked lowest according to all human development indicators. However, “we must continue to help the new nation to become a nation and consolidate its gains. This is the ultimate test of peace-building and nation-building”.

At the same meeting, Vice-President of South Sudan, Mr. Machar Teny-Dhurgon, affirmed that South Sudan had accepted obligations under the UN Charter, and that “South Sudan will be a responsible member of the international community, will respect the obligations of international law and accede as soon as possible to all relevant international treaties, especially those related to human rights”. Mr. Machar spoke of continued cooperation with Sudan, and at home, South Sudan welcomed the support of the new UN mission. “We have made a solemn commitment to democracy, pluralism, inclusiveness, the rule of law, and freedom of thought, belief and expression. We will embrace tolerance and unity”(ibid., 5).

South Sudan wanted to be “a member of the international community”, and through its UN membership and cooperation with the UN and the UNSC, it was part of that process. Moreover, it wanted to be a good member by recognising the importance of the international human rights regime. The mission was to assist the government (UNSG 2011b, para. 64–65) in creating this “normative framework, building a national capacity for the promotion and protection of human rights consistent with international standards”, and to help support the justice sector, at all levels, as well as the military criminal justice system, reflecting pillars I and II.

The Representative of the United Kingdom pointed out that both leaders of Sudan and South Sudan had “shown leadership” in delivering a peaceful referendum, and the

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9 According to Wood (1998, 85–95), interpretation of the UNSC resolutions should be done in good faith (see UN Charter article 2 para. 2), and terms used should be seen in their “normal” meaning. As Wood (ibid.) notes, “In an ideal world, each resolution would be internally consistent, but [...] SCR’s are frequently not clear, simple, concise or unambiguous”. There can be inconsistencies, and thus it would be important to interpret them in good faith. Resolutions are meant to have a political, not legal effect. Resolutions should also be interpreted in their context, “meaning the whole text of a resolution”, including its preamble and annexes. Resolutions form a series of resolutions; context refers also to those other resolutions of the same matter which are mentioned in preambles.



UNMISS is an indication of the international community's collective commitment to support the Government of South Sudan and the South Sudanese people (S/PV.6583, 14). The UK was a member of the Troika (along with the US and Norway) that strongly supported the CPA. The Representative of France welcomed the birth of a new African State, the first since the period of decolonisation, which represents a fresh start for the people of South Sudan (S/PV.6583).

When planning the new UNMISS mandate, the UNSG (2011b, para. 31–32) considered all issues relating to the CPA and post-referendum issues not resolved (Abyei question, citizenship) that would affect relations between these two states and could negatively affect the implementation of effective DDR (disarmament, demobilization and reintegration). There were also the recurrent community-based conflicts as well a problem of a proliferation of small arms, thus increasing criminality (SCR/mf 2011c). It was estimated that approximately one-million people would be stateless in Sudan if the parliament did not allow dual North-South citizenship (SCR/mf 2011d, 7). Abyei changed its status to that of being an inter-state, which did not make the issue any easier.

Resolution 1996 (2011) recalled various resolutions and Presidential Statements, Secretary-General Reports on children and armed conflict, as well as resolutions concerning the protection of civilians in armed conflict and the role of women,<sup>10</sup> thus constructing the entire mandate as a *protection mandate*, while the mandate ought to be interpreted from this perspective.

UNMISS' *tasks, according to the mandate* were, acting under Chapter VII, to support peace consolidation by providing good offices, advice and support to establish state authority; to anticipate, prevent, mitigate and resolve conflict; to establish an early-warning capacity system; to investigate, verify and report regularly on human rights and potential threats against the civilian population and potential violations of international humanitarian law and human rights law; to advise and assist the government in fulfilling its responsibility to protect civilians; to deter violence and protect civilians under imminent threats of physical violence, especially when the government is not providing such security; support the government to develop the capacity to provide security, to establish the rule of

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<sup>10</sup> Recalling its Resolutions 1612 (2005) and 1882 (2009) and Presidential Statements of 29 April 2009 (S/PRST/2009/9) and 16 June 2010 (S/PRST/2010/10) on children and armed conflict, and taking note of the reports of the Secretary General on Children and Armed Conflict in Sudan dated 10 February 2009 (S/2009/84) and 29 August 2007 (S/2007/520), and the conclusions endorsed by the Security Council Working Group on Children and Armed Conflict in the Sudan (S/AC.51/2009/5);

Reaffirming its Resolutions 1674 (2006) and 1894 (2009) on the protection of civilians in armed conflict, and 1502 (2003) on the protection of humanitarian and United Nations personnel; Reaffirming its Resolutions 1325 (2000), 1820 (2008), 1888 (2009), 1889 (2009) and 1960 (2010) on women, peace, and security and reiterating the need for the full, equal, and effective participation of women at all stages of peace processes given their vital role in the prevention and resolution of conflict and peace-building;

Reaffirming the key role women can play in re-establishing the fabric of recovering society and stressing the need for their involvement in the development and implementation of post-conflict strategies in order to consider their perspectives and needs

law, to strengthen the security and justice sectors, including human rights capacities and institutions, and to use all necessary means to carry out its protection mandate.<sup>11</sup>

These practices of state-building reflect pillar I of R2P in terms of a state having a responsibility to protect its people, upholding sovereignty as responsibility, and pillar II in that when the state is not able to do the aforementioned itself, it is the international community's duty to assist the state. The Representative of the United Kingdom referred to a collective commitment to support and assist (S/PV.6583). To protect its citizens, a state needs the national capacity to do so. Some have argued that institution-building plays a major role in preventing mass atrocities and conflicts to support good offices, confidence-building, facilitation, and an early-warning capacity as mandated in Resolution 1996 (2011). The Resolution also refers to the Presidential Statement of February 2011 (S/PRST/2011/4) which affirms "national ownership and national responsibility are key to a sustainable peace" confirming what is stated in Resolution 1996(2011). Preventing and mitigating conflicts cannot definitively prevent mass atrocities, but might do so, since the root causes for mass atrocities are often similar to those of conflicts, so it is worth trying. Although conflict prevention and mass atrocity prevention are not the same, they are related (see Hehir 2015).

State-building as such can be seen as a conflict-prevention strategy. South Sudan would have been a good case for R2P prevention or conflict prevention using preventive peacekeeping deployment since the situation was volatile in the early days of its independence. As Sharma and Welsh argue (2015, 6–7), R2P prevention is usually approached as conflict prevention. During the first years of independence (2011–2013), this kind of conflict-prevention framework would have been understandable and useful. If conflict prevention is defined broadly, almost everything the UNSC authorises belongs in this category. However, the mandate mentions building early-warning capacities as an integrated approach and "monitoring, investigating, verifying and reporting on human rights and their potential violations", which could be interpreted to mean the prevention aspect for both conflict and R2P. The mandate also refers to ending impunity, the rule of law, and security and justice sector development, including human rights institutions. Authorising the use of force to protect civilians represents a new discourse for the use of force at the UN and the UNSC.

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11 Benchmarks were developed for UNMISS, the aim of which was to identify targets against which the success and progress of UNMISS was to be measured. They were negotiated together with the Government of South Sudan (UNSG 2012b). Vice-President Machar and SGSR Johnson met weekly to discuss the mandated areas, including e.g. peace-building, constitution, human rights violations. Johnson also met President Kiir regularly (see Johnson 2016). Benchmarks (see UNSG 2012b, Annex) are achieved when the government has achieved effective state authority, held elections in accordance with the constitution, sufficiently developed the capacity of its rule of law, and security institutions can maintain public order and protect civilians. However, there was some "lack of urgency from the government's side" (UNSG 2012c; UNSG 2012d; S/PV.6874) but the establishment of the National Reconciliation Committee was a move in the right direction. The South Sudan Representative said that the inter-communal violence relationship with Sudan has contained its ability to deliver these much-needed services (S./PV. 6993).

Was issuing a mandate for a state-building mission an ethical thing to do – even though the practices reflect pillars I and II of R2P and could be R2P competent, stressing the responsibility of the state to protect its citizens?

#### 4.5.2 Practices of protection of civilians – inter-communal and cross-border violence

##### 4.5.2.1 *Inter-communal violence*

The UNSG (2011c; 2012a) stated in his reports that the security situation in South Sudan is dangerous, particularly in Jonglei and the Upper Nile states (see map of South Sudan, Appendix), and repeated that the Government of South Sudan has the primary responsibility for protecting its civilians. The UNMISS plays a supporting role in matters of immediate protection and longer-term “efforts to build political, administrative and rule-of-law capacities” (UNSG 2011c, para. 80). Most threats to security in South Sudan are internal, but there are also disputes with Sudan. The Representative of South Sudan confirmed that his government has the primary responsibility to protect its civilians (S/PV.6660). If the security threats are internal, who then is threatening the civilians? There were severe violations of human rights in the fall of 2011 by both the South Sudan police and SPLA, while the UNMISS was helping the government in this regard according to its mandate.

However, in October 2011, the UNSC discussed the possibility of reducing its military personnel from 7000 to 6000. This is probably because there were three UN missions in Sudan and South Sudan that together were deploying one-third of all UN uniformed personnel on the ground at the time (SCR/mf 2011e, 6; also SCR/mf 2011f). Inter-communal violence as well as food scarcity in the Unity and Jonglei states was intensifying. In December 2011, the UN Food Programme considered that South Sudan was facing a “severe hunger crisis”. The challenges were enormous (see e.g. SCR/mf 2012a). Both in January 2012 and August, the Council issued statements to the press (SC/10514, SC/11103) expressing its concern regarding inter-communal violence in Jonglei state.

In accordance with its mandate, UNMISS should have prevented and responded to the crisis situation in Jonglei, including the use of aerial assets, and supported the Government of South Sudan in providing security, promoting reconciliation for various ethnic groups, and addressing the proliferation and sophistication of arms. The UNSC was concerned about the situation in Jonglei, as expressed in its press statements. Some members thought more aircraft would be needed, and most were concerned about the proliferation of arms which would require demilitarisation and reintegration of former rebel groups (SCR/mf 2012b); this was challenging, and, for various reasons, not self-evident. China had supplied arms to the government for being one of the leading suppliers of arms and ammunition but ended this activity as the conflict broke out in December 2013; Sudan had been supplying

arms to rebel groups. However, China has a special interest in peace in South Sudan; it is a customer of South Sudanese oil and has made economic investments in South Sudan (S/2015/656).

The UNMISS Human Rights Division (UNMISS 2012), in its report, discussed Jonglei's inter-communal violence<sup>12</sup> and the challenges to protect civilians in South Sudan. However, despite the government's promises to protect civilians, while the SPLA had been instructed to do so, actions came too late and with insufficient troops. Moreover, the SPLA was of the opinion that protection of civilians was the police's duty (Johnson 2016, 105), yet the problem was that there was no police force; it was yet to be developed as an institution. The UNSG (2012b) confirmed that the mandate would stay under Chapter VII to make possible impartial assistance to the Government of the Republic of South Sudan (GRSS) to protect civilians as in Jonglei. The threat was not coming from the government.

This relates to the UNMISS protection of civilians problem in Jonglei. UNMISS (Johnson 2016, 105–144) had to ask the government for help to protect civilians; diplomatic skills were needed to manage the consent. UNMISS encouraged the SPLA to protect civilian. The UNMISS mandate was to protect civilians under threat; for a state, their human rights obligations mean it need to protect its citizens against all violations *regardless of who* is committing them. Munson (2015, 73) estimated that UNMISS was neither passive nor unsuccessful in its work to protect civilians, as it was a victim “of bureaucracy, logistic infrastructure, different perspectives and differing working methods within a multinational organization”. According to Munson, UNMISS was a watchdog and working with the government, which is a demanding position for keeping a balance.

The UNMISS report (2012) concludes that this Jonglei experience has shown how all protection actors must carefully reassess their capacity. Inter-communal violence is difficult to solve as the reasons are multifold; access to arms causes insecurity, and there is marginalisation and no development. UNMISS emphasises how important it is that the GRSS is committed to protecting all its civilians, no matter their ethnic origin. UNMISS here takes an implicit stand that perhaps the GRSS has not done everything it could have done to protect its civilians (see also UNSG 2013a).

Violence, instability and power struggles in South Sudan were not anything new between different communities, and as SGSR Johnson says, “new tensions are emerging from old wounds” (S/PV.6938), as the outside enemy, Sudan, had lost some its power. Inter-communal violence had marked the UNMISS PoC work, as some 5000 civilians fled from inter-communal violence in Wau (Western Bahr El Ghazal) in December 2012 and sought refuge in the UNMISS camp. In Jonglei, people sought help from UNMISS bases and not from the SPLA safe area also available (Johnson 2016, 122).

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12 December 23, 2011, thousands of armed youth, the so-called “White Army”, originally of the Lou Nuer ethnic group, began hostilities toward the Murle tribe-inhabited area for 12 days. On 27 December, armed youth Murle group attacked back on the Lou Nuer and Bor Dinka areas; violence thus affected Murle, Lou Nuer and Dinka areas. Hundreds were killed and thousands were displaced (UNMISS 2012, 1; see also Johnson 2016, 97–144).

As the situation in South Sudan still constituted a threat to international peace and security in the region, Resolution 1996 (2011) also related to the situation between Sudan and South Sudan and regional security. South Sudan was internally insecure, so it was considered important to support South Sudan, not least for the security of the region. These arguments were used to support the renewal of state-building mandates 2057 (2012); 2109 (2013). As the Representative of South Sudan stated in the UNSC discussion (S/PV.6993), inter-communal violence and the relationship with Sudan prevented South Sudan from developing “general basic services, respect for human rights, the protection of civilians, the consolidation of peace”, and the country is grateful for the help and support UNMISS provided. This could be interpreted to mean both order and justice in the form of sovereignty.

The UNSG (2013d, para. 92–93) estimated in his June 2013 report that the security situation in Jonglei had deteriorated further, with continuing human rights violations by armed groups, government security forces, the SPLA, and violations in respecting the right to freedom of expression (see also UNSG 2013a; S/PV.6993). This should be addressed more strongly as the Council was renewing Resolution 2109, and many Council members wanted to prioritise the protection of civilians mandate instead of the state-building mandate at this stage (SCR/mf 2013e, 19). However, the Representative of South Sudan (S/PV.6993,5) emphasised that as the SPLA-led government “fought against injustices and marginalization of identity groups [it] could not, therefore, advance a strategy against the safety and the rights of the population for which it fought” and South Sudan needs the international community to help in this fight. South Sudan’s wish was respected.

UNMISS was criticised for not succeeding in protecting civilians. SGSR Johnson (2016, 98–99, 122; 143–144) explained the difficulties it faced, with mobility problems in difficult environments and resource problems<sup>13</sup>. UNMISS was further criticised for not making the government accountable for human rights violations, while the South Sudanese blamed the UN for being too hard on the SPLA, its army and government. It was difficult to meet the different expectations without losing South Sudan’s consent. Johnson further explained that South Sudanese leaders thought UNMISS was set up to protect South Sudan’s sovereign and territorial integrity, and its secondary task was the capacity to build state institutions. They interpreted Chapter VII’s mandate to protect civilians as “an insult to their sovereignty”. The civilian protection mandate would have been needed “before independence”, but not now in independent South Sudan, as the country thought itself capable of protecting its people.

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<sup>13</sup> UNMISS was based on a “decentralized and integrated” nature, which reflected South Sudan’s ten states, each divided in counties, a total of 79 in the whole country. UNMISS operated at all levels, national, state and county. State support bases were located in state capitals and later in counties where they were most needed. At each level, military, police and civilian components worked together. UNMISS was in South Sudan to *effectively* do the mission mandate. Different troops involved had different opinions regarding what this meant (see Munson 2015, 37,43; see also UNMISS map 2015, Appendix).

From the South Sudanese government's viewpoint, this makes the UNSC mandate to protect civilians "stronger". Many people in South Sudan thought that the UN had replaced Kharrtoun (Johnson 2016) and was interpreted to mean interference in internal affairs; this contradicted discussions in New York at UNSC meetings by the South Sudan Representatives (S/PV.6478; S/PV.6583).

There is also a question of managing the mandate and a reminder of the importance of nation-building. State-building should not be separate from nation-building; the elite's consensus is not enough. Also interesting is that the South Sudanese themselves were for their government, their army, although clear human rights violations were happening. Could this be understood according to the African perspective of "defending one's brother even when it is clear the brother is wrong" and has done wrong things? Also, this could be seen in "something called South Sudanese" (see AUCISS 2014a, para. 138). This is a question of having different interpretations of the concept of accountability.

Peace-building and nation-building take time; they are not events, but processes. At a normative level, the UN recognises this, but the UNSC does not provide enough resources for it to happen (Munson 2015, 53). The UN made the first UN South Sudan Peace-Building Support Plan pursuant to Resolution 1996 (2011), which was to support South Sudan's Development Plan. Munson (2015, Ch. 5, note 2, 156) estimates that the plan was a general one "with good intentions" but hard to realise in practice. This relates to the problem of the mission's once-a-year framework, according to which mandates are renewed once a year if the UNSC sees it as necessary and possible. Mandates could be changed, if seen as necessary and possible, which is what happened in the UNMISS case in May 2014 when the situation in South Sudan changed. The mandates were almost "impossible mandates" and raised huge expectations. What could UNMISS do with its limited resources (see Munson 2015, 69–70)? Was it an ethical thing to do? Capacities and obligations should be rightly defined. At the same time, in South Sudan there were incorrect ideas about what the UN mandate actually was, which created false expectations and thus disappointments.

#### 4.5.2.2 *Cross-border violence*

The UNMISS has a robust mandate in terms of human rights and the rule of law, but its mandate does not cover border monitoring or the relationship between Sudan and South Sudan. There has been intensifying rhetoric on both sides, "with accusations and counter accusations" leading to further tensions, as SGSR Johnson briefed the UNSC meeting in 2011 (S/PV.6660).

One of the main problems for the UNSC was how to effectively manage the many interconnected political and security challenges between South Sudan and Sudan, inside South Sudan and inside Sudan. In March 2012, the UNSC stated (S/PRST/2012/5) that cross-border violence between Sudan and South Sudan is a threat to international peace and security. It demanded that "all parties cease military operations in the border areas and



end the cycle of violence” since the main objective is to have two democratic states with “the rule of law, accountability, equality, respect for human rights, justice and economic development”.

Resolution 2046 (2012), authorised under Chapter VII and adopted in May 2012, reflected the “incomplete divorce” between Sudan and South Sudan. Issues related to economic arrangements “regarding debt, oil exploitation, the use of existing oil infrastructure, the status of nationals of one country in the other, border security, the settlement of remaining border disputes and the determination of the final status of Abyei” (see also UNSG 2012b, para. 2). These issues also caused problems for internal development in both countries, especially in South Sudan, but also in Sudan (see Johnson 2016, 57–96; also S/PV.6874). The UNSC expressed its full support for the Roadmap outlined in the April 2012 decision of the Peace and Security Council of the African Union, the situation between Sudan and South Sudan, and the need to normalise their relations as the situation along the border constitutes a serious threat to international peace and security. The UNSC also expressed its intent – having adhered to the decisions made in Resolution 2046 (2011) “to take appropriate additional measures under article 41 of the Charter”, which means *sanctions*. Further, the Council strongly urged both parties to resolve their disputes and condemned any spoilers of the AU’s Roadmap. Those responsible for serious human rights violations would “be held accountable” (see also S/PRST/2013/14). UNSC condemnations are often considered powerless, but words can be powerful; they tell what is appropriate and what is not.

The US Representative (S/PV.6764) supported the African Union’s Roadmap of April 2012 to regulate the conflict between Sudan and South Sudan and referred to how the UNSC is united in holding both parties accountable, stating, “We stand ready to impose Chapter VII sanctions on either or both parties, as necessary.” France supported the Resolution as did the Representative of the United Kingdom; the AU action plan now also has Chapter VII authorisation according to the AU’s wish.

The Representative of China expressed, for its part, that “China has always maintained that international community should have objective, impartial and balanced positions on the question of Sudan and South Sudan, avoid taking sides or imposing unbalanced pressure on the parties, and refrain from interfering in the mediation efforts of the African Union” (S/PV.6764). China was skeptical about the use or threat of sanctions, stating, “African issues should be resolved by Africans using African means”. The Russian Representative (S/PV.6764) agreed that African problems needed African solutions. However, Russia found the text of Resolution 2046 inappropriate since “the arsenal of political and diplomatic tools for normalizing the situation is far from exhausted”, and while it considered sanctions an extreme measure, their effectiveness should be carefully considered. China and Russia supported pluralism over solidarism, and great powers were divided on the issue.

Resolution 2046 was adopted unanimously (S/PV.6764). Although Council members were not united on the necessity of sanctions – Russia and China considered them

potentially “counter-productive when the aim is to promote negotiations between the parties” – they nevertheless supported the Resolution, perhaps to show consensus from the Council (see also SCR/mf 2012c).

The Representative of Sudan (S/PV.6764) stated that Resolution 2046, just adopted, contained judgement of the repeated incidents of cross-border violence between Sudan and South Sudan. However, Sudan added that the Resolution “disregards the continuous acts of aggression perpetrated by South Sudan against the Sudan”. Sudan denied all the accusations made against it. Moreover, Resolution 2046 contains measures of threat under Article 41 of the Charter, which the AU Peace and Security Council did not ask for. The South Sudan Representative thanked the Council for adopting the Resolution (S/PV.6764). The Representative of South Sudan (S/PV.6874), later in the UNSC discussion, expressed his appreciation that the UNSC supported the AU Roadmap and the AU’s leading role in promoting peace and security in the region also stressing cooperation between the UN and the AU. The South Sudan Representative also confirmed South Sudan’s “unwavering commitment to international human rights and humanitarian standards”.

#### 4.5.2.3 *Human rights practices*

The UNMISS mandate was renewed by Resolution 2057 (2012) in July 2012, as was Resolution 2109 (2013) in July the following year. Both were adopted unanimously. Resolution 2057 (2012) emphasised the importance of post-conflict peace-building, institution-building as a critical component of peace-building, the protection of civilians and should accomplish its protection mandate as set out in Resolution 1996.

The Representative of South Sudan stated (S/PV.6800) that the UNMISS reflects the acceptance of South Sudan as a member “within the community of nations”, and protecting civilians is a national responsibility “that we take extremely seriously”; it occupies the highest priority on the government’s agenda. To increase security efforts at home, and to put relations with Sudan “on a secure, long-term footing”, South Sudan welcomed UNMISS support regarding national state-building and peace-building strategies. South Sudan thanked the UNSC for renewing the UNMISS mandate as this supports the sovereignty of the South Sudan and its membership at the UN and the international community.

When the mandate was renewed with Resolution 2109 (2013) in July 2013, one year later, the Representative of South Sudan stated that the government is “aware of the country’s serious security and human rights challenges”. However, human rights are considered most important to the country, because “the struggle was essentially a fight against discrimination, marginalization, exclusion, denial of rights, and human indignity. Universal human rights, reinforced by positive elements in our cultural values, are at the core of the legacy of our liberation struggle” (S/PV.6998; see also S/PV.6874). As the UNMISS worked and supported the government, it meant to establish its sovereignty. South Sudan’s normative stand could be interpreted as hypocrisy and/or knowledge of

normative standards which are useful to follow but also capable of producing something good.

The UN High Commissioner for Human Rights, in the Human Right Council Report (HCR 2013, 1–5) from June 2013, outlines human rights challenges for South Sudan. The report confirmed that many issues have had a negative impact on the development of human rights and specified them as political tensions between Sudan and South Sudan, internal conflicts and inter-communal violence. They have made the situation difficult and have negatively affected nation- and institution-building. Human rights challenges relate especially to the protection of civilians and the capacity of that protection needs to be strengthened.

The UN encouraged the South Sudanese to join and sign different human rights agreements which would set the standard for expectations. This approach integrates South Sudan into the international community. Human rights norms and standards from the most important human rights conventions are in the Transitional Constitution of South Sudan, which the Council of Ministers adopted in November 2012 as a national agenda for human rights. The government committed itself to ratifying<sup>14</sup> all major international human rights treaties, aiming to construct a national legal framework to protect human rights, while UNMISS provides technical assistance and support for this work. Despite some progress, the justice system in South Sudan is “weak and ineffective” (see HRC 2013, para. 15, 40–42, 23).

This was what South Sudan was expected to do. However, was South Sudan ignoring the existing situation in South Sudan and approaching a world which does not exist (Munson 2015)? Related to human rights, the United Nations Development Program (UNDP) and UN Women have recorded gendered practices prevalent in South Sudan; there is no education for young girls, as girls get married very young; the notion of rape does not exist, as girls are raped in marriage (AUCISS 2014a, para. 60). A question could be posed: “What happens when existing cultural practices turn out to be detrimental to the interests of those whose lives are regulated by them?” (AUCISS 2014a, para. 129). Ethically, was it the right thing to do? If so, from which perspective?<sup>15</sup> International human rights law, international humanitarian law, international criminal law, the international refugee law, and the UN Charter form the normative basis for UN activities when supporting justice and the rule

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14 In June 2014, South Sudan was a party to the Geneva Conventions of 1949 and their two Additional Protocols (ICJ 2014). During 2015, it made the following ratifications: Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment – CAT, CAT-Optional Protocol, Convention on the Elimination of All Forms of Discrimination against Women – CEDAW, CEDAW-Optional Protocol and Convention on the Rights of the Child- CRC and CAT- Inquiry procedure under the Convention against Torture (OHCHR 2015).

15 Munson (2015, 70–71) gives an example suitable here: the UN has encouraged the SPLA not to use child soldiers, which is also against Conventions on the Rights of the Child (CRC). However, the SPLA officers and soldiers have taken care of many children and did not want to leave them. UNMISS wanted to find a solution and to take care of these children/soldiers, but this kind of solution would require time, resources and long-term planning.

of law (see e.g. UNSG 2004a) as well as R2P. South Sudan, as a member of the UN, has accepted obligations under the UN Charter.

#### 4.5.2.4 *What kind of protection of civilians – PoC agenda*

The protection of civilians was “neither specific nor unique” to UNMISS, claims Munson (2015, 62–64), who served in UNMISS in 2013, but it gave the mission flexibility to decide what to do, whether it was the primary focus of the mandate, main goal, or whether it just authorised UNMISS to respond to violence as an implicit goal as one of the general objectives. The difficulty here is that it could be difficult to know what the Council means when mandating the protection of civilians.

The UNMISS military emphasis on civilian protection (by all necessary means) at the expense of everything else would mean e.g. “protecting innocent women and children” from different armed groups. The mission took it to mean, from a more sophisticated perspective, “not just as mere day-to-day security”, as Munson called it. The UNMISS wanted to build a functioning PoC regime which would not only stop physical violence in South Sudan but also for the South Sudanese themselves to support this regime in the future, which would entail long-term development of a culture of prevention that also reflects broader normative debates (Munson 2015, 63). So the aim was as it should be.

UNMISS had a three-tier strategy, with three levels of protection establishing a basic framework for how different activities can support PoC (see e.g. UNSG 2013c, para. 38–41). These three tiers are “mutually accommodating” and should be forwarded at the same time according to the peace operation mandate. As there is no inherent hierarchy, the mission should use everything at its disposal to protect civilians and help host state authorities (UN 2008, 4; Munson 2015, 62–63). However, UNMISS was mandated “to use all necessary means” to carry out its protection mandate. Using force for civilian protection entails the use of force for the collective good, thus developing and having a new paradigm, a new discourse for the use of force (see Knudsen 2013; 2015; 2018; Willmot & Mamiya 2017, 376), meaning a move towards a people-centred and solidarist international society.

Such a new discourse regarding the use of force would imply human security. An approach in terms of “freedom from fear” means freedom from violence according to the practices of e.g. capacity-building, security sector reforms, disarmament, and the establishment of the ICC regarding accountability (Kerr 2010, 117). Civilian protection unites political and humanitarian activities in peace operations and can function as a substantive component of a broader mission concept. As discussed, protecting civilians under “imminent” threat means that civilian protection is one of the many potential roles or goals in multidimensional peace operation, and as stated in Resolution 1996 (2011), “protecting civilians under imminent threat of physical violence, in particular when the Government of the Republic of South Sudan is not providing such security”. UNMISS

protection could be interpreted to be a PoC regime or agenda referring to the protection of individuals (cf. protection of populations).

However, the notion of “imminent” is problematic; in a legal sense, the interpretation is different from its political interpretation (see Munson 2015, 64–65). The mandate was to protect “from imminent threat”, but the questions were: who was to be protected and from whom, who poses the imminent threat, and how should the mandate be interpreted? South Sudan stated that there is no need for such a mandate after its independence, defending its sovereignty. The assumption was that people were being protected “from insurgents”, but in practice also from the government’s own security forces, SPLA, or from South Sudan’s National Police Service (SSNPS) (Munson 2015, 63–64).

The UNSG (2013e, para. 79) stated in November 2013 that South Sudan is at a crossroads. A peaceful resolution of internal conflicts needs to be addressed, and lasting peace will only be achieved if this occurs. The UNSC gave UNMISS a mandate to assist the government, including the military and police, so South Sudan could fulfil its responsibility to protect the civilian population. As SGSR Johnson stated in the UNSC meeting (S/PV.7062), UNMISS has continued “to conduct capacity-building activities in the area of human rights and protecting civilians to support the government”. “South Sudan is at a crossroads. As an international community, we cannot afford to see the newest country in the world fail”, argued SGSR Johnson (S/PV.7062).

The Representative of South Sudan, in a speech at the UNSC, implied that he/they knew exactly what is going on in the country, what should be done about it, and how the situation should be addressed. “Our Government remains committed to a policy of zero tolerance for crimes against civilians, especially by the army, and those who commit such abuses will be held fully accountable.” The situation in Jonglei is complex, and “It is a situation that clearly presents a challenge to our government’s ability to take the primary responsibility for the protection of its citizens, a responsibility we take seriously” (S/PV.7062).

#### 4.5.3 Violence breaks out – opening the gates

Violence broke out on December 15, 2013,<sup>16</sup> first in Juba and in other states, mainly Jonglei, the Upper Nile and Unity states (see the map of South Sudan, Appendix ), but also other states. The political crisis is framed to be between President Salva Kiir and Vice-President Machar. President Kiir saw the situation, so Mr. Machar planned a coup d’état with forces loyal to him. Mr. Machar stated instead that Presidential Guard troops started the fighting. However, on December 21, Mr. Machar stated that he had formed a resistance group to fight against the government, and his armed forces were SPLM/A in opposition (see UNSG 2014a, Ch. II; see also UNMISS 2014, 14–16; also AUCISS 2014, 16; SCR/

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<sup>16</sup> It is perhaps not right to say that violence broke out at certain date not taking into consideration what happened before that date in South Sudan, referring to the conflict history of South/ern Sudan and what was happening throughout the country (see AUCISS 2014, 10–11, 20–23).

mf 2014d, 6). The African Union Commission of Inquiry on South Sudan (AUCISS 2014, para. 68) refers to two competing narratives of what happened. The first narrative is about violence that broke out because of problems within the Presidential Guard; there were plans to disarm its Nuer components, which caused confusion and distrust. The second narrative is that violence broke out with “an aborted coup”. The AU referred to the first narrative (see also AUCISS 2014a). The Commission distinguishes between cycles of violence. The first cycle, target violence, refers to what happened in Juba December 15–18. It was organised, not spontaneous. The second, revenge violence, when the violence spread to other parts of the country, was more reactive than deliberate (AUCISS 2014a, para. 178–179). Mahmood Mamdani (AUCISS 2014a, para. 179) stated that “the target violence should be subject of political accountability, the revenge violence of a Truth Commission”. How and why the violence started is still contested.

The UNSC immediately expressed its serious concern over the fighting, urged all parties to cease hostilities, emphasised the importance of protecting civilians, regardless of their communities of origin, and “called for all authorities to respect the rule of law and human rights and called for the government to engage in dialogue with its opponents” (SC/11221).

The UNSC, two days later, on December 20<sup>th</sup>, expressed its grave concern regarding the

rapidly deteriorating security and humanitarian crisis in South Sudan resulting from the political dispute among the country’s political leaders, which threatens serious implications for the long-term security and stability of South Sudan, as well as for the neighbouring countries and other peace and security challenge in the region (SC/11227; see also SC/11236; SC11244; SC/11261).

It was estimated that over 18000 civilians sought protection at two UNMISS bases in Juba during the first days of the conflict (SCR/mf 2014d, 6).

IGAD, supported by the AU and the UN, immediately started mediation – according to pillar III – hoping the parties could settle their differences peacefully. Since the situation was framed from the beginning as being between President and Vice-President, the conflict was bifurcated. On January 23<sup>rd</sup>, 2014 the government and the SPLM/A in Opposition signed agreements on the Cessation of Hostilities (CoH) and the status of detainees (see also SC/11261)<sup>17</sup>. As the UNSG (2014a, para. 10) notes, opposition political parties and civil society organisations expressed strong interest in “an inclusive dialogue and a process of national reconciliation”. However, the parties involved violated the CoH soon thereafter (for development of the crisis, see UNSG 2014a, Ch. III). By mid-January 2014, almost 500,000 persons had been displaced in South Sudan and some 75,000 people had fled to neighbouring countries. In March, it was estimated that thousands had been killed, and at least 800,000 refugees had been displaced, with 75,000 in UNMISS camps/safe sites. There was a rapidly developing humanitarian crisis or catastrophe, with the existing food

<sup>17</sup> Cessation of Hostilities can be defined to mean stopping hostilities in war or armed conflict for a certain period of time without necessarily making any concessions. Political negotiations should continue to find a sustainable solution (see Yawanarajah & Ouellet 2003).



insecurity estimated to turn into famine. UNMISS set up protection sites within its bases; humanitarian workers provided food and water to mitigate the risks of the health crisis, and efforts were made to address inter-communal tensions (UNSG 2014a, Ch. IV). The Government of China built alternative protection sites in Juba (ibid.; see also S/PV.7141, 2) which shows China's special interest in South Sudan.

The UNSC decided to raise the UNMISS "military component up to 12,500 troops of all ranks" and "a police component up to 1,323" and authorised the UNSG to take the necessary steps to facilitate inter-mission cooperation such as MONUSCO, UNAMID, UNIFSA, UNOCI and UNMIL, which had been providing troops according to Resolution 2132 (2013) since 24 December. This was meant to "support its protection of civilians and provision of humanitarian assistance". It was also "a timely decision", according to pillar III of R2P (see S/PV.7141).

The UNSC condemned "reported human rights violations and abuses *by all parties*, including armed groups and national security forces, and emphasized that those responsible for violations of international humanitarian law and international human rights law must be held accountable" (SC/11227-AFR/2775). It welcomed the strengthening of the human rights investigation capacity by the UNMISS supported by the OHCHR and supported the IGAD initiative to seek open dialogue between key leaders. According to Resolution 2132 (2013) the UNSC was acting under Chapter VII, demanding "that all parties cooperate fully with the UNMISS as it implements its mandate and in particular regarding the protection of civilians and stresses that efforts to undermine UNMISS's ability to implement its mandate and attacks on United Nations personnel will not be tolerated". Human Rights Up Front (HRUF) was presented to member states in December 2013 to strengthen UN efforts to protect civilians from human rights violations, and this might have affected how the response to civilian suffering in South Sudan was handled (see SCR/mf 2014e, 11; see also Salama 2015).

In December 2013 when the fighting started in Juba and spread to other regions, thousands of civilians had to leave their homes, becoming IDPs escaping targeted attacks. They went to UNMISS sites in Juba, Bor, Akabo, Bentiu, Malakal, and Meluf seeking shelter. UNMISS opened its gates, and with humanitarian workers, prepared sites for protecting civilians (UNSG 2014a, para 44; also S/PV.7141) as mentioned. This was an extraordinary act, establishing safe sites according to pillar III of R2P. If focusing on physical protection and troop numbers, "protection practices" are stressed more than "protection as an outcome" (see Salama 2015), now it was done otherwise. This "opening the gates" as an act signified that rules had been broken, (not) to support the Government, but to find the most suitable practices for the situation. It was an ethical thing to do. Mr. Ladsous, Under-Secretary-General for Peacekeeping operations stated: "The protection priority will be for those sheltering at United Nations compounds and other locations which they have sought sanctuary" (S/PV.7141,3).

UNMISS had a mandate to protect civilians “under imminent threat”, it put people first in the spirit of solidarism. UNMISS had opened its gates before in Wau, a year earlier, and the people could return home (Johnson 2016, 186–187). This did not happen in 2013, but it was not what was expected. Reinforcement of the mission mandate, Resolution 2132, was estimated to be enough for the IDPs to return home when the peace process would have started (UNSG 2014a, para. 57). However, the situation continued to be grave. People had to stay in safe sites, and conditions in these sites turned out to be bad; diseases spread, and criminal activity developed. Since former combatants were at these sites, weapons were there too. These problems had to be responded to daily, and force had to be used (UNSG 2014a, para. 49). However, an additional problem with the safe sites was that only civilians inside the sites could be offered protection. There are always civilians on the outside who need protection. The IDPs and residents felt they were being treated differently (AUCISS 2014a, para. 108–110). UNMISS troops applied their protection priority to civilians and IDPs at safe sites. The plan was that UNMISS would wait to get more troops to secure the return of IDPs so the protection operation could spread further (see S/PV.7141). However, the deployment of troops was delayed (UNSG 2014a). Moreover, as Mr. Ladsous, Under-Secretary-General for Peacekeeping Operations, stated, “UNMISS will [...] uphold strict impartiality” and not launch or be part of “any activity that could enhance the capacity of either side to engage in military or hostile operations”. As such, UNMISS did not participate in any activity that might harm the IGAD-led mediation process (S/PV.7141). The situation was complicated and problematic.

The UNSG briefed the UNSC (S/PV.7172, 2) in May 2014 and said the decision for the UN “to open its gates [was] as an emergency option to protect innocent civilians”; it was a risk to all involved. He continued “It is not a routine decision, nor one taken lightly, but one that we were morally compelled to take”. However, later, as discussed, these safe sites caused problems – political, ethnic and tribal tensions as well as criminal activity – and it is evident that they are not sustainable solutions. As such, UNMISS should be able to expand its protection activities outside the camps (S/PV.7511). This operation of “opening gates” saved thousands of lives, while thousands more would have otherwise lost their lives, which Mr. Deng, the Representative of South Sudan, also admitted (S/PV.7141, 7).

The UNSG described how the three-tiered strategy for the protection of civilians was still valid but needed changes as the operational context had changed. However, UNMISS developed a medium-term, three-tiered response to guide protection activities during a crisis (UNSG 2014a, para. 46).

UNMISS issued an interim public report (UNMISS 2014) in February and later in May, the final report (UNMISS 2014a, 3) on serious human rights violations that have occurred since December 15<sup>th</sup> (referred to earlier).

there are reasonable grounds to believe that violations of international human rights and humanitarian law have been committed by both parties of the conflict. These violations include extrajudicial killing, enforced disappearances, rape and other acts

of sexual violence, arbitrary arrests and detention, targeted attacks against civilians not taking part in hostilities, violence aimed at spreading terror among the civilian population, and attacks on hospitals as well as personnel and objects involved in peacekeeping mission.

The AU concluded the same; there were reasonable grounds to believe that war crimes and crimes against humanity were committed by both sides, but no crime of genocide (AUCISS 2014, 296–299). These crimes are of such scale and level to “shock the conscience of humanity”. They are inhumane acts with criminal intent, a “systematic and widespread attack” against civilian populations (see e.g. UNMISS 2014, 55–56; Article 7 of the Rome Statute).

The AUCISS (2014a) also concluded that both parties in the conflict, Salva Kiir and Riek Machar, are responsible for the crisis, its escalation and the violations committed (see also HRC 2014). Neither GoSS, nor the SPLM/A-IO has done anything to investigate these crimes and bring perpetrators to justice. Since the government has not done its share, this meant importance of international efforts to investigate these violations (HRC 2014, para. 77; also S/PV.7168, 3) according to pillar III and for the sake of ending impunity.

The South Sudan Human Rights Commission (SSHRC 2014)<sup>18</sup> also issued a report on the human rights situation in South Sudan after the fighting in December 2013 and concluded that “a large number of civilians and combatants were killed as well as atrocities have been committed, while the number of victims was higher than the number of victims in the South Sudan liberation struggle. Furthermore, the Commission stressed a political solution to conflict and the need “to prioritize the interest of the people of South Sudan” (ibid., 13).

#### 4.5.3.1 *Problems with managing consent between the government and UNMISS*

The conflict in January 2014 created tensions between the government and UNMISS. There were misunderstandings about UNMISS’s role during the crisis. There were accusations that UNMISS was not being impartial, that UNMISS was helping anti-government forces, that the UN was helping Rick Machar to safety, that UNMISS was protecting rebels (and not innocent civilians), and that weapons were being hidden at the safe sites. So there were many incidents of harassment, threats and and negative campaigns against UNMISS were made. President Kiir accused UNMISS of wanting to be a “parallel government”. Demonstrations against UNMISS in several places (Central Equatorial State, Warrap State) were organised by the government. However, just a few days later, in

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<sup>18</sup> The South Sudan Human Rights Commission (SSHRC) was established under the Transitional Constitution and Human Rights Commission Act 2009. By 2011, it had established a presence in all ten states with UNMISS Human Rights Officers who provided technical advice and assistance according to Resolutions 1996 (2011) and 2057 (2012) in pursuit of a robust human rights mandate. UNMISS was to strengthen the capacity of national stakeholders (HRC 2013, para. 61, 45–46), but SSHRC has not worked very efficiently (HRC 2013, para. 18).

January 2014, it was announced that the President's remarks were misunderstood. As such, South Sudan sent a letter to the UNSC a few days later, January 23, 2014, confirming its willingness to work with UNMISS to quell these tensions (S/2014/46; Johnson 2016, 207–215; UNSG 2014a, para 35–37; S/PV.7141; SCR/mf 2014e, 11).

The Representative of South Sudan stated at the UNSC meeting in November 2013, (S/PV.7062) that they deeply regretted any violations made against the UN Status-of-Forces Agreement; the incidents were “by no means any reflection of South Sudan’s policies”. He later remarked at the UNSC meeting in March 2014 (S/PV.7141) that the anti-UNMISS sentiment perceived in demonstrations in different parts of the country was a serious matter and that these were happening based on people thinking, mistakenly perhaps, that the UN was taking sides and “supporting the other side of the conflict”. As such, he stated, “the United Nations cannot of course take sides” (S/PV.7141, 8). It is also understandable that “misunderstandings in a crisis situation can generate hostile reactions” (ibid.). He also referred to plans to refocus the UNMISS mandate on the protection of civilians, human rights and security sector reform, but made a request that the UNSC continue its support of South Sudan as “The country is more in need of international support than ever before” (ibid.). As such, in its move to underline the fact that it is impermissible for the UN and the Council to take sides, South Sudan also asked that impunity be disregarded, thus stressing its sovereignty.

The Status-of-Forces Agreement (SOFA) between the UN and the Government of South Sudan was violated many times between November 2013 and March 2014, which affected how the UNMISS could implement its mandate (see UNSG 2014a, para. 37; SC/11359). All Council members were troubled by the SOFA violations, which reflected the difficulties in managing the mandate (SCR/mf 2014e, 12).

What role could, or should, the UNSC take in the South Sudan conflict? Security Council Report estimated that they could mediate between different parties, protecting civilians, ensuring humanitarian access, and holding accountable those who have violated human rights? This would mean a request for additional troops, (which it did, Resolution 2132 (2013) was adopted), using visiting missions to signal to the parties the necessity for reconciliation (which it did), and imposing targeted sanctions on spoilers of the state-building process (which it did) (SCR/mf 2014d, ibid.). In December 2013, the UNSC was still being careful in changing the mandate, but did it in May 2014, as what happened became clearer.

## 4.6 Practices of protection of civilians – refocusing the mandate

As discussed, ongoing SOFA violations created tensions between UNMISS and South Sudan. Consequently, the UNSC had to consider whether the UNMISS mandate should be changed so the protection of civilians would be UNMISS's main priority, instead of

state-building, due to the changed circumstances. If a state is committing mass atrocities, assistance measures under pillar II would be useless.

The state-building process, as such, had not made progress since independence. The conflict was political, “fundamentally a national political crisis” (S/PV.7141, 2). It was not an ethnic conflict; government groups represented many ethnic groups in the way as did the rebels opposing them. However, huge efforts are needed in the future for reconciliation to develop any type of national unity between different groups. That is also a challenge for the UNSC in terms of how the Council could support justice and reconciliation efforts in South Sudan (SCR/mf 2014e, 12).

The UNSC could impose targeting sanctions against those responsible for human rights violations (pillar III), conduct a visiting mission to South Sudan to get a view of how to better promote national reconciliation (pillar III), and change the UNMISS mandate to give priority to the protection of civilians, humanitarian access and human rights (pillar III). Discussion at the UN should concern reasons for changing the mandate to prioritise civilian protection (SCR/mf 2014e, 12) and why it necessary to do so.

The Council was consensual in its concern about the fighting in South Sudan, inter-communality of the conflict and reports of grave human rights violations. It also agreed on the need for civilian protection and accountability (SCR/mf 2014e, 12). This all clearly reflects the R2P pillars. In a way, this was obvious; R2P crimes had happened, they had been discussed in public, and there was an ethical stand to support civilians and not support perpetrators. The UNSC took the stand to not support the perpetrators, thus reflecting solidarist principles.

Mr. Ladsous (S/PV.7141, 3), briefed the UNSC meeting in March regarding the mission.

UNMISS was deployed to help South Sudan transform into a democratic State and to assist its leadership in delivering long-awaited dividends of peace and independence to its citizens, Today, the leadership is divided, its security institutions are fragmented and the society victimized by communal tensions. Under those conditions, and as was discussed with the Council, the initial *raison d’être* of UNMISS no longer applies.

Of course, an option for the Council would have been to not even consider changing or reprioritising the mandate and thus consider South Sudan’s stand. A justified question is also how was this possible in the first place? Why was there a state-building and peace-building mandate to start?

The UNSG (2014a, para. 67–72) presented two scenarios for the next year, from March 2014 to March 2015. The first was that the CoH would be partly implemented, political negotiations are not likely to produce peace agreement, and human rights violations would continue because when there are no peace agreements, and the humanitarian situation deteriorates. The second, and worst scenario, meant that fighting and violence would continue, grave violations of human rights and mass atrocities would go on, along with an

“increased risk of involvement from external actors”. In other words, the mission needed to reprioritise its activities (UNSG 2014a, para. 68):

(a) protecting civilians under imminent threat of violence; (b) contributing to the creation of security conditions conducive for the delivery of humanitarian assistance, as requested and within capability; (c) increasing human rights monitoring and reporting; (d) fostering inter-communal and national dialogue; and (e) supporting the IGAD monitoring and verification mechanism and political dialogue in support of the Addis Ababa negotiations, if and when requested.

This represented a significant change – from supporting the government in its state-building and peace-building efforts to a strict position of impartiality in relations with both parties where both parties have committed atrocities. The UNSG (2014a, para. 69) states that UNMISS puts “on hold any capacity-building support to either party that may enhance their capacity to engage in conflict, commit human rights violations and abuses and undermine the Addis Ababa negotiations process”. However, according to the UNSG, UNMISS should continue its capacity-building activities in states where there is no conflict, providing it does not enhance the parties’ fighting capacities. This was not what eventually happened, but it involved ethical pondering on what to do, what is the right thing to do, and what may work. The idea of supporting states not yet under conflict “to prevent further destabilisation” (*ibid.*) meant emphasising order without forgetting justice. There was a thought on how to manage consent.

The UNSG (2014a, para. 73) stated that

The extent of death, destruction, gross violations of human rights and displacement in such a short period has few precedents. The leadership responsible for this conflict must heed the calls of the population and put an immediate end to the violence and suffering.

In the future, “The Mission will protect those in need, within its means” (*ibid.*, para. 79), i.e. meet the needs of the people, putting people first as long as the conflict continues, also, it is committed to its original aim of building a new nation. This could be interpreted to mean order and justice at the same time. UNMISS also continued to work on local-level reconciliation and capacity-building related to the protection of civilians and human rights (*ibid.*, para. 81), in part as a means to try to further inclusiveness.

Not supporting those who violate human rights was a strategic shift in the UNMISS mandate. Since UNMISS operates under Chapter VII, the use of force is made possible for the protection of civilians, and the emphasis on human security is clear. The protection priority was on those seeking shelter, and as discussed earlier, this was not only a positive thing. Insufficient resources prevented effective action outside the safe areas.

The UNSC expressed its outrage at the attacks on civilians in Bentiu and on the UN base in Bor in April (SC/11359) and a few days later, “expressed horror and anger”



(SC/11363) over what happened in Bentiu<sup>19</sup> (see UNMISS 2015). “Never before [...] had anyone seen such atrocities committed by South Sudanese against South Sudanese. [...] Never before had the towns of Bor, Malakal and Bentiu seen such a destruction” (Johnson 2016, 261). Thousands and thousands had been killed, and the exact total of deaths was difficult to tell (UNMISS 2014, 56, 60).

The question for the UNSC was how to respond – to reprioritise the mandate to protect civilians, enhance human rights monitoring and reporting, fight against mass atrocities and consider lessons learnt from Rwanda, referring to Resolution 2150 (2014). To address inter-ethnic violence, there was an option to impose targeted sanctions on those who had committed grave human rights violations. The situation was considered grave, and the Council wanted to give up state-building activities in non-conflict areas – as opposed to what the UNSG recommended – since there was a lack of resources, and the more imperative priority was to protect civilians. Perhaps it was important to avoid any kind of indication that the Council was supporting a state that is committing mass atrocities (SCR/mf 2014g), which would not have been an R2P-competent act.

During the UNSC’s discussion of South Sudan’s situation, Mr. Dieng, UNSG Special Advisor on the Prevention of Genocide, and Ms. Pillay, the UN High Commissioner for Human Rights, briefed the UNSC on their visits to South Sudan. Both stressed how “the culture of impunity had fuelled the conflict” and how accountability is essential in this respect. Peace requires that those who are responsible for crimes committed are to be held accountable. As for the reasons for the conflict, Mr. Dieng was also clear. “Today’s violence in South Sudan is not motivated by the desire to change the country, but rather self-interested goals related to accessing oil wealth and development resources. The international community must not be complicit in this agenda” (S/PV.7168, 5). He also stated, “There can be no peace without justice [...] There is no excuse for inaction” and “we must uphold our collective responsibility to protect the populations of South Sudan from genocide, war crimes, ethnic cleansing and crimes against humanity and their incitement” (S/PV.7168, 5–6). This is a clear R2P statement, in all respects. Moreover, both he and Ms. Pillay referred to the experiences of Rwanda.

With Resolution 2150 (2014), which was adopted unanimously in April 2014, the UNSC called for a recommitment “to prevent and fight against genocide and other serious crimes under international law, reaffirm paragraphs 138 and 139 of the 2005 World Summit Outcome Document (A/60.L.1)”, stressed the fight against impunity, ensured accountability for R2P crimes, and recognised “in this regard the contribution of the International Criminal Court”. The UNSC recalled in this Resolution how “the leaders and members of Democratic Forces for the Liberation of Rwanda (FDLR) were among the perpetrators of the 1994 genocide against the Tutsi in Rwanda, during which Hutu and

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19 UNMISS (2015, 4, 1) describes the events in Bor and Bentiu as representing “the nadir of the conflict”. There was continuing and systematic targeting of civilians, widespread and cyclical violence, and the soldiers were undisciplined. Attacks were conducted against protected places, and these attacks may amount to war crimes.

others who opposed the genocide were also killed”. The ideas of this Resolution were also considered in the case of South Sudan.

The US Representative stated that the US President “had issued an executive order providing for targeted sanctions against those individuals who had contributed to atrocities or taken action harmful to peace and stability in South Sudan” (S/PV.7168, 7). The US wanted the Council to consider whether it should also impose sanctions to deter “the outrageous attacks on civilians of the kind we saw in Bor and Bentiu last month”. The US referred to the draft resolution which was to revise UNMISS’s mandate to focus more on “civilian protection, human rights monitoring and investigation”. The US made a clear threat to South Sudan that pursuing peace “is not too late, but the window is closing” (ibid.).

The Representative of China (S/PV.7168) stated that the security and humanitarian situation is grave in South Sudan, and China was “deeply concerned about the situation”. China urged both parties of the conflict in South Sudan “to reach a ceasefire and end violence immediately”, supported the political mediation efforts led by IGAD, and urged parties “to protect the security and safety of civilians, including foreigners and peacekeepers”. However, China wanted “the international community to step up its assistance to South Sudan” (ibid., 10) – despite the mass atrocities committed. It was important to China that peace and order would prevail in South Sudan and Sudan, but this at the expense of accountability and justice.

The Representative of Russia (S/PV.7168, 11) urged “the political settlement of armed the conflict” and stated “the leaders of both warring parties must set aside their own ambitions and begin seeking a solution”. The Russian representative shared Mr. Dieng’s and Ms. Pillay’s “concern at the mass violations of human rights and the norms of international humanitarian law by both parties to the conflict”. Russia was sceptical about the growing calls for targeted sanctions, regardless of the clashes in Bor and Bentiu possibly amounting to war crimes. According to Russia, the UNSC needed to be extremely cautious in this, as “sanctions have never been an effective instrument for achieving political settlements in political conflicts. They can only undermine the spirit of cooperation”. What should be done, according to Russia, was to wait for leading regional actors to put forth such an initiative. Russia also criticised the UNMISS performance for its inability to protect civilians; it could do better with the reviewed mandate.

The Representative of the United Kingdom (S/PV.7168) referred to Rwanda, stating political leaders should take full personal responsibility for the fighting. The UNSC should focus on ending impunity, as “[a]ccountability and justice are essential for national healing and reconciliation”. The UN should increase support of IGAD’s mediation efforts. Targeted sanctions might be needed in this along with the availability of arms (arms embargo). Safety of civilians must be a priority, thus stressing human security and all practices of pillar III. He concluded by saying, “The international community has the tools to alleviate that suffering. We must act”.

The Representative of France (S/PV.7168) stated that although South Sudan holds the main responsibility for its citizens, the UNSC nevertheless cannot remain indifferent to the situation. It should take necessary steps to ensure “the protection of populations under threat”. According to France, the UNMISS mandate should be renewed to prioritise the protection of civilians. The UNSC should consider “a sanction regime against individuals who oppose the political process” since impunity cannot continue. Considering the gravity and scale of crimes, independent and impartial investigations must be called for immediately, and “we must consider a referral to the International Criminal Court”.

The UNSC openly and publicly discussed the crimes committed. One matter of great importance was ending impunity; fighting against impunity was to be a priority. Since there was “no doubt that war crimes and crimes against humanity were committed, in order to fight against impunity and prevent future atrocities”, the UNSC needed to “seriously consider a referral to the ICC”, stated the Representative of Luxemburg, as well as considering a sanctions regime (S/PV.7168).

As UNSC members took the stance that both parties were responsible for the fighting and violations of human rights, the Representative of South Sudan (S/PV.7168, 21) said that such “moral equivalency might be understood as a tactic, or even a tragedy, of mutual recognition and respect, [but] it risks equating right and wrong in a way that clouds the situation on the ground”. According to South Sudan, since the government has the primary responsibility for protecting its citizens, it is not justified in putting “a democratically elected Government on the same moral, political and legal grounds as a rebel group using violence to overthrow the Government”, and, he continued, “allegations of both sides [...] cloud the facts”, while there is a “need to place responsibility where it belongs”. According to South Sudan, “senseless violence” was mainly committed by rebels. The government strongly condemned the rebels who committed massacres and stated that putting the blame on both sides was an insult to South Sudan and its sovereignty.

AUCISS (2014a, para. 159) put forth the question: “Is President Kiir an elected President or an elected Vice-President and in that case, of South Sudan or Sudan?” Salva Kiir was elected as Vice-President, and that election was organised by Sudan, not South Sudan. Furthermore, South Sudan has not had national elections since its independence. However, when South Sudan applied for UN membership, its application letter for admission was signed by Salva Kiir Mayardit, President of the Republic of South Sudan, and it was accepted (S/2011/418).

The Representative of South Sudan (S/PV.7168) pointed out that withdrawing support from South Sudan – although reconsidering priorities is understandable – because of a lack of resources or as a punitive measure can only make the conflict worse. South Sudan needs “understanding, compassion and support in building a nation that can ensure peace, security, stability and development of its people”. The South Sudan representative declared that capacity-building was needed more than ever. South Sudan asked for support for its

sovereignty, and asked that atrocities committed be bypassed, since order is more important than justice.

The UNSG briefed the UNSC in May 2014 (S/PV.7172, 2–3) on how the South Sudan conflict is a man-made calamity, and “the two leaders must recommit to an inclusive nation-building that involves all political leaders and civil society, thereby addressing the root causes of the conflict”. The UNSG stressed a need for justice and accountability. The UNSG suggested a special or hybrid tribunal with international involvement, and “the parties must cease a senseless power struggle and restore the sense of national unity that prevailed at the time of independence” (S/PV.7172), and “the problem is with the elite, not with the local people” (AUCISS 2014a, para. 144).

The UNSC was active in South Sudan’s issues during May 2014. There was a reaffirmation of the January 23<sup>rd</sup> CoH on May 9<sup>th</sup>, with an agreement to establish e.g. a transitional government of national unity to include all stakeholders to negotiate this government. This happened after US Secretary of State John Kerry and Ban Ki-moon appealed to the leaders, Salva Kiir and Riek Machar, to meet. On May 11<sup>th</sup>, Kiir announced that the 2015 Presidential election would be postponed until 2017 or 2018, as extra time was needed to build a national consensus. By then, the US had already imposed targeted sanctions, so the political message was sent (SCR/mf 2014c; S/PV.7172).

The UNSC had to consider how to stop the fighting, support the peace negotiations and facilitate access to humanitarian aid. As possibilities, it could consider targeted sanctions as it had done before, it could have a visiting mission to put pressure on the parties, or it could refer the situation to the ICC. The UNSC was concerned with the violations of SOFA agreement and supporting the IGAD-led peace process. The Council was united in its approach to the conflict and the importance of civilian protection but differed on the question of accountability; many Council members supported targeted sanctions and referrals to the ICC, but some, notably Russia, wanted to be careful with sanctions (SCR/mf 2014c, 13). So there were competing norms, while all the means at the UNSC’s disposal were not considered.

The Representative of South Sudan (S/PV.7172, 4) wanted to give credit to the positive outcomes in the conflict, namely the reaffirmation of the CoH and that the people of South Sudan are grateful to the international community – IGAD, the AU, the UN and the US – for their support of South Sudan. He repeated that it is a government’s responsibility to protect its population, and “when a State lacks that capacity to discharge that national responsibility, it is incumbent upon the international community to provide the necessary support to enhance that State’s capacity in fulfilling its national responsibility”. If the UNSC want to reprioritise the current UNMISS mandate, it should remember to support South Sudan’s state-building efforts, as South Sudan also sees this as a form of preventive strategy (S/PV.7182, 2). The aim of the peace process is “a balance between justice and accountability through restoration of unity, forgiveness and reconciliation” (S/PV.7172, 4). The Representative stated that South Sudan is unable, but willing, to protect

its populations. Further, it is willing to uphold its state-building, but not able to do that either, and therefore it is the international community's responsibility, according to pillar II of R2P, to support its efforts.

#### 4.6.1. Protection of civilians, human rights monitoring and investigation, humanitarian help – R2P agenda

The UNSC revised the previous UNMISS mandate from state-building to peace-building to focus on protecting civilians, facilitating humanitarian access and human rights monitoring, and investigating and implementing the cessation of hostilities agreement according to Resolution 2155 (2014), May 27<sup>th</sup>. The resolution was adopted unanimously, which was remarkable.

The UNSC strongly condemned “reported and ongoing human rights violations and abuses” and stressed “that those responsible [...] must be held accountable”. The mandate referred to all parties, “including armed groups and national security forces”. The UNSC reaffirmed<sup>20</sup> the need for strong protection, the R2P-mandate; the mandate practices should be interpreted in this framework.

The UNSC considered the UNSG's recommendations, authorised UNMISS to “use all necessary means” to perform its task and expressed its readiness to consider “all appropriate measures” against spoilers of peace.

Practices of protection in Resolution 2155 (2014) refer

- To protect civilians under threat of physical violence, irrespective of the source of such violence, within its capacity and areas of deployment, with specific protection for women and children, including through the continued use of the Mission's Child Protection and Women Protection Advisers;
- To deter violence against civilians, including foreign nationals, especially through proactive deployment, active patrolling with particular attention to displaced civilians, including those in protection sites and refugee camps, humanitarian personnel and human rights defenders, and identification of threats and attacks against the civilian population, including through regular interaction with the civilian population and closely with humanitarian, human rights and development organizations, in areas at high risk of conflict including, as appropriate, schools, places of worship, hospitals, and the oil installations, in particular when the Government of the Republic of South Sudan is unable or failing to provide such security;

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20 “Its resolutions 1265 (1999), 1296 (2000), 1674 (2006), 1738 (2006) and 1894 (2009) on the protection of civilians in armed conflict, and 1502 (2003) on the protection of humanitarian and United Nations personnel; resolutions 1612 (2005), 1882 (2009), 1998 (2011), 2068 (2012), and 2143 (2014) on children and armed conflict; and resolutions 1325 (2000), 1820 (2008), 1888 (2009), 1889 (2009), 1960 (2010), 2106 (2013), 2122 (2013) on women, peace, and security; resolution 2150 (2014) on the Prevention and Fight against Genocide; and resolution 2151 (2014) on security sector reform”.

- To implement a mission-wide early-warning strategy, including a coordinated approach to information gathering, monitoring, verification, early-warning and dissemination, and response mechanisms, including response mechanisms to prepare for further potential attacks on United Nations personnel and facilities;
- To maintain public safety and security within and of UNMISS protection of civilian sites;
- To exercise good offices, confidence-building, and facilitation in support of the mission's protection strategy, especially in regard to women and children, including to facilitate inter-communal reconciliation in areas of high risk of conflict as an essential part of long-term State-building activity;
- To foster a secure environment for the eventual safe and voluntary return of internally displaced persons (IDPs) and refugees including, where compatible and in strict compliance with the United Nations Human Rights Due Diligence Policy (HRDPP), through monitoring of, ensuring the maintenance of international human rights standards by, and specific operational coordination with the police services in relevant and protection-focused tasks, in order to strengthen protection of civilians;

Monitoring and investigating human rights are part of civilian protection – human rights practices

- To monitor, investigate, verify, and report publicly and regularly on abuses and violations of human rights and violations of international humanitarian law, including those that may amount to war crimes or crimes against humanity;
- To monitor, investigate, verify and report specifically and publicly on violations and abuses committed against children and women, including all forms of sexual and gender-based violence in armed conflict by accelerating the implementation of monitoring, analysis and reporting arrangements on conflict-related sexual violence and by strengthening the monitoring and reporting mechanism for grave violations against children;
- To coordinate with, and offer technical support to, where appropriate, the African Union's Commission of Inquiry for South Sudan;

and creating conditions for delivery of humanitarian assistance through humanitarian practices

- To contribute to the creation of the conditions for the delivery of humanitarian assistance, including by helping to establish the necessary security conditions and by exercising its good offices, confidence-building and facilitation, so as to allow, in accordance with relevant provisions of international law and United Nations guiding principles of humanitarian assistance, the full, safe and unhindered access of relief personnel to all those in need in South Sudan and timely delivery of humanitarian assistance, in particular to internally displaced persons and refugees;



- To ensure the security and freedom of movement of United Nations and associated personnel where appropriate, and to ensure the security of installations and equipment necessary for implementation of mandated tasks;

and supporting the implementation of the Cessation of Hostilities Agreement.

The protection of civilians, as described, is the most important issue; it must be considered when delivering the mission's capacities and resources. Protection is therefore the mission's primary goal, not an aim to be achieved through other aims. This is still a consensual operation, not one with military intervention but still an R2P mission, implying pillar III of R2P (cf. Hult & Berkman 2006, 42–44). Pillar III seeks to use all possible and available “tools, procedures and arrangements in Chapters VI, VII, VIII of the Charter” (Luck 2009, 117) which do not necessarily refer to humanitarian intervention or involve humanitarian intervention.

In July 2014, the UNSG (2014b, para. 75) determined that the leaders of South Sudan “have brought the country back to the worst violence and human rights abuses of its history” and “have failed in state-building, nation-building and economic development”. Mr. Mulet, Assistant Secretary-General for Peacekeeping Operations, briefed the Council (S/PV.7235, 2–4) regarding how South Sudan faces a humanitarian catastrophe “despite the scale of the humanitarian operation [...], the biggest aid operation in any single country”, “aid efforts have been hampered by insecurity, obstructed access, insufficient and delayed funding and delayed logistical, human resource and political constraints” (ibid., 3) and protracted internal conflict. The humanitarian crisis is man-made, and those responsible for it have been slow to resolve it. The parties in the conflict still think they achieve what they want by military means. Mr. Mulet emphasised that the international community must speak with one voice.

The Representative of South Sudan (S/PV.7235) said that the South Sudanese government waits the rebels to show their willingness to negotiate, and that the international community and the Council should remind them of “the importance of adhering to CoH”. The Government of South Sudan wants the UN and UNMISS to continue capacity-building efforts which, it estimates, would contribute to peace. The Government of South Sudan reiterated its willingness to work with the UN and UNMISS despite past misunderstandings.

The Council issued a Presidential Statement (S/PRST/2014/16) on August 8th, 2014 expressing its alarm regarding the situation in South Sudan. It condemned repeated violations of CoH in January 2014, lack of implementation of the Agreement to Resolve Crises in South Sudan, on May 9<sup>th</sup>, 2014 recommended full participation in ongoing peace talks in Addis Ababa, with IGAD and AU, and considering “all appropriate measures, including targeted sanctions against those who take action that undermines the peace”. The Council reiterated its stance that military solutions to the conflict are not acceptable, not for the parties, and not for the international community.

As the IGAD-led peace negotiations took place in May–June 2014, the AU was also active and the AU Peace and Security Council (PSC), issued a communiqué on the situation in June, expressing deep concerns as the parties to the conflict had not moved in a meaningful direction and instead violated CoH. It also reiterated its commitment “to implement targeted sanctions and other measures, upon IGAD’s recommendation, on any party that undermines the peace process” (SCR/mf 2014b, 13–14).

The South Sudan government questioned IGAD’s objectivity, as it expressed concern about *both* parties not fully participating in the peace process. The government demanded that parties participating in negotiations should be “non-partisan” and exclude pro-opposition civil society participants. The other party, the SPLM in Opposition, was also critical of the participants IGAD chose to take part in the negotiations. Parties chosen for negotiations should be only the government and the opposition, and participants – former SPLM detainees and other political parties – should support one or the other. Thus, there should be only two groups. The opposition did not accept what was planned, the meeting of four groups. The government agreed to participate when former “high-level SPLM detainees” would participate. However, the SPLM-IO continued to boycott the planned meeting (ibid., 14).

At the same time, the government was criticised at home; high-level officials in the Foreign Ministry and the Deputy Ambassador to the UN considered that the President was being “insensitive to the needs [...] of South Sudan’s people” and disregarding their human rights. Some Members of Parliament criticised Kiir for being a dictator who did not respect the parliament (SCR/mf 2014b, 14).

As a result of the negotiations, “A Protocol on Agreed Principles on Transitional Arrangements Towards Resolution of the Crisis in South Sudan” was signed by on August 25<sup>th</sup>, with exception of the SPLM-IO, which did not find the content of the protocol acceptable. There were no signatures from other participants although they were mentioned in the preamble. It was apparent that rethinking the mediation and peace process was needed, as participants have voiced repeated criticism of IGAD’s mediation. (SCR/mf 2014a).

Political divisions in the region were reflected in both IGAD’s and the Council’s work. Targeted sanctions and an arms embargo were options for the UNSC. IGAD, especially South Africa, supported the approach “African Solutions to African Problems”, but this was not accepted by e.g. Ethiopia, Kenya or Uganda. As Sudan is a member of IGAD, the mediation process did not come any easier (SCR/mf 2014a; Cosmas 2015).

The Troika (US, UK, Norway) tried to support IGAD mediation efforts. Some IGAD members – mainly Ethiopia and South Africa – felt that the Troika had not taken them seriously during the CPA process and used the current conflict as revenge. Civil society representatives have supported the idea that the agreement should interrupt the prevailing connection between the military and politics (see Cosmas 2015) but their voices were not too much heard. It was difficult to avoid “the Manichean interpretation” of the conflict .

The South Sudan conflict awakened regional tensions and divisions, as was expected (ICG 2015, i). IGAD's history in regional conflict resolution gave it the leading role in mediating South Sudan's conflict. To support the IGAD-led peace process, the Council needed to support cooperation with regional organizations according to pillar III of R2P, but as seen, not without problems and unwanted outcomes. Was it the right thing to do?

As mentioned, a resolution to the South Sudan conflict is essential for regional security and stability. After the December 2013 conflict, IGAD wanted to start the talks but got not too much support from others. As ICG (2015, 19) estimates, for Western countries this is not as important as combating international terrorism. The IGAD states of Ethiopia, Uganda and Kenya are partners in the fight against terrorism, and this is why they are hard-pressed to be in peace negotiations (see Cosmas 2015). In this light, the decision to support the IGAD-led peace process is pragmatic and implies the best choice in the spirit of pluralism.

Targeted sanctions have been discussed for a long time in the Council, but no action has been taken even though the situation in South Sudan was dire. The Council would also like IGAD to join this initiative and for IGAD to be first to impose sanctions. It would give the UNSC the needed political backing from the region, and this is especially what Russia has demanded. Joint measures would be better perceived as "one voice" of the international community. However, IGAD is also divided on how to approach the South Sudan conflict; IGAD has refused to impose robust measures, including sanctions, against the parties (SCR/mf 2014a). There has been growing dissatisfaction among Council members regarding the parties' inability to opt for "a political solution" (SCR/mf 2014j) to end grave human rights violations and ongoing fighting (UNSG 2014c; 2014d).

Among Council members, there were different views on how accountability for the grave human rights violations ought to be addressed – targeted sanctions and/or arms embargoes. When the UNMISS mandate was renewed with Resolution 2187 (2014), it was adopted unanimously without targeted measures being imposed. In the Resolution 2187 (2014), the UNSC only expressed its "intention to consider all appropriate measures, in consultation with IGAD and the AU, against those who take action that undermines the peace, security, stability of South Sudan, including those who prevent the implementation of these agreements". This process reflects the contestation of norms and the UNSC as a place for deliberation, arguments and change. It also reflects Pillar III cooperation with regional organizations.

The Representative of South Sudan (S/PV.7322) stated, once again, that South Sudan's situation would not be helped by imposing sanctions; they never achieve "the intended objective" and instead produce "confrontation rather than develop cooperation". South Sudan wants both parties to be treated equally "by engaging both parties constructively". South Sudan is intolerant to these alleged practices of human rights violations, which are violations of its own culture, but "allegations are just allegations". Changing and refocusing the UNMISS mandate has not been a change for good, from South Sudan's viewpoint,

“especially in the area of law enforcement agencies and institutions” (ibid., 3). The message was that if these institutions are considered so important, then denying them support is not good. From South Sudan’s perspective, it would be better for the UNSC to reconsider its position and reinstate the original UNMISS mandate.

The UNSG (UNSG 2014e, 1) published in December 2014 his first “Report on Children and Armed Conflict in South Sudan”, containing information on the violations against children:

all parties to the conflict in South Sudan were responsible for grave violations against children during the reported period, including killing and maiming, recruitment and use, abduction and rape and other forms of sexual violence. [...] The scale of violations has increased rapidly since the escalation of armed conflict in December 2013.

Children and women belong to so-called “vulnerable groups”. South Sudan ratified both Conventions on the Rights of the Child and the Elimination of All Forms of Discrimination Against Women, accessed in January 2015. However, there is no necessary causal relationship between norms and ethical arguments used; there is, nonetheless, *a possibility* for change. Here, it could be thought that ratifying the treaties might count as hypocritical promises, while conversely, ratifying the treaties would mean that South Sudan, at some level, accepts the norms in question towards which their practices could be measured.

The Council repeated that the full responsibility for what happened in South Sudan is on its leaders, the government and the opposition, and “reiterated its intention [...] on all appropriate measures, including targeted sanctions against those impeding the peace process” (S/PRST/2014/26). There is also an implicit signal from the ICC, as the leaders of South Sudan are repeatedly said to be responsible for what happened, and accountability is expected by all parties.

Mr. Simonovic, Assistant Secretary-General for Human Rights, briefed the UNSC (S/PV.7392,5) of his visit to South Sudan. The conflict has affected civilians’ civil and political rights as well as their economic, social and cultural rights. Huge amounts of money have been spent and wasted on corruption and fighting “between two groups of army veterans and their leaders” (ibid). These funds should have been spent on social development. The international community, for its part, should have used its funds for “emergency relief, instead of long-term capacity building”. South Sudan’s people “desire peace, justice, human rights, social development and political participation” (ibid.). In Juba, 65 tribes supported the imposition of sanctions on all parties and/or individuals who did not sign the negotiated agreements but were spoilers. After this briefing, UNSC members were ready for the establishment of a sanctions regime in South Sudan (SCR/mf 2015e, 3).

Consequently, the Representative of South Sudan (S/PV.7392, 6) expressed disappointment about the UNSG report (2015a). He said it gave an alarming picture of

the situation in South Sudan and questioned the country's "pride, dignity, the value of our independence and sovereignty" and place in the international community. According to the UNSG's report, the country is "in turmoil" and "[t]he international community, through the UNMISS, is virtually managing the situation, with the Government manifestly failing to discharging its primary responsibility protecting and assisting its population", meaning moreover, that the "international community cares more about the people of South Sudan than their own leaders" (ibid., 7).

Mr. Deng of South Sudan stated (ibid.):

Although South Sudan is now violently divided between the Government and the opposition, it is important to remember that the leadership was popularly elected and represents the legitimacy of the Government and the sovereignty of the country. It is of course prudent to be connected to both sides and to work on fostering national consensus, but the United Nations should work in collaboration with the current Government to address the practical problems facing the country. It is one thing to condemn the leadership of the country and threaten the imposition of sanctions, which, as I have had occasion to say to the Council, would only generate an adversarial relationship and aggravate the situation; it is quite another thing to reaffirm that the international community went to South Sudan in the first place to support the country, that recent developments may indeed undermine the nature and magnitude of that support, but that remedies can be found to restore a constructive basis for partnership in the stabilization and development of the country. It would be an ironic double jeopardy to punish a country that is already suffering from an acute crisis. I believe it would be appropriate for UNMISS and the country team to meet with the country's relevant authorities in the Government to discuss and strategize the most constructive way of addressing these crises and concurrently use their mutual strategic understanding as a basis for reaching out to the armed opposition.

#### 4.7 Sanctions regime, accountability, ending impunity and reconciliation

Targeted sanctions were discussed long before such a mandate was eventually authorised. The UNSC prepared for the imposition of these sanctions for a long time, as a means of signalling, with great insistence, to the parties in the South Sudan conflict that their behaviour is not acceptable. They should stop fighting, uphold and enforce human rights norms, since the lesser means have not been successful in stopping the fighting and the grave violations of human rights and humanitarian law.

The lengthy discussions concerning the imposition of sanctions also signify the UNSC's need to affect a balance between human rights and sovereignty as well as great power management – as such, the discussions also concerned the status of sovereignty. In other words, successful use of sanctions shows that human rights supersede sovereignty and

great power management (targeted sanctions), while the opposite (no sanctions) has not shown success (imposing an arms embargo in 2016). In a sense, the discussion pertains to how competing norms – human rights and sovereignty, and pluralism and solidarism – can and do exist at the same time (see Wilson & Yao 2018, 128–129, 136–138).

Imposing sanctions is a highly collective act; it is an ethical act reflecting the UNSC's moral responsibility and what should be expected from South Sudan (see Wilson & Yao 2018, 128–129). With sanctions also comes an imposition of solidarity (Crawford 2002).

It was estimated in February 2015 that nearly two-million people had been displaced since December 2013, including IDP's and refugees<sup>21</sup>. The UN Office for the Coordination of Humanitarian Affairs (OCHA) estimates that 2.5 million people have faced food insecurity, that there was hardly any infrastructure regarding reliable roads, and that moving around was dangerous (SCR/mf 2015b, 6). The Council had to consider how to develop its ability to protect civilians – the core element and aim of its mandate in Resolution 2155 (2014) – and how to further peace negotiations. The Council had several options for how to proceed. It could implement *targeted sanctions*, *an arms embargo*, or request *community liaison assistants* to help UNMISS with local communities to be better informed about potential threats (SCR/mf 2015b, 7).

The parties in South Sudan were, however, committed to a military solution. Several Council members emphasised that “there needs to be accountability for the serious human rights violations” (SCR/mf 2015b, 7) committed in South Sudan. In principle, Russia and China are against targeted sanctions. They see them as counterproductive and have expressed their doubts, especially if the sanctions do not have IGAD's backing (SCR/mf 2015b). Ideally, the international community should “speak with one voice” (see e.g. ICG 2015, 19–25). The UNSC is a place for contestation and deliberation, but with no moral limits, there would be no ethical reasoning. Discussion of targeted sanctions implies ethical reasoning, seeking moral limits, and it not easy to build a moral community.

There was a need to end impunity in South Sudan and bring to justice the perpetrators of the crimes, according to Resolution 2187 (2014), as reflected in a Presidential Statement (S/PRST/2014/16). The UNSC stated that reported human rights violations “may amount to war crimes or crimes against humanity under international law”, and there is “the need to ensure accountability for serious violations and abuses of human rights and serious violations of international humanitarian law”. It welcomes UNMISS efforts to monitor, investigate and publicly report on human rights violations in pursuit of justice and an end to impunity.

The UNSG (2014b, para. 76) promised

I will do my utmost to ensure that those responsible for the atrocities committed in South Sudan, including alleged war crimes and crimes against humanity, are brought to justice. I welcome the continuing work of the African Union Commission of

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21 South Sudan's population in 2015 was approximately 12 million; see <https://data.worldbank.org/country/south-sudan>.



Inquiry in this regard. South Sudan, with the assistance of the international community, must put into place effective accountability and reconciliation measures that meet international standards.

Resolution 2206 (2015) was eventually adopted, unanimously. R2P language was used, and the wording of the Resolution gives a clear picture of the situation in South Sudan (see also HRC 2015).

The UNSC condemned all human rights and humanitarian law violations:

targeted killings of civilians, ethnically-targeted violence, extrajudicial killings, rape, and other forms of sexual and gender-based violence, recruitment and use of children in armed conflict, abductions, enforced disappearances, arbitrary arrests and detention, violence aimed at spreading terror among the civilian population, and attacks on schools, places of worship and hospitals, as well as United Nations and associated peacekeeping personnel and objects, by all parties, including armed groups and national security forces, as well as the incitement to commit such abuses and violations, further condemning harassment and targeting of civil society, humanitarian personnel and journalists, and emphasizing that those responsible for violations of international humanitarian law and violations and abuses of human rights must be held accountable, and that the Government of South Sudan bears the primary responsibility to protect its population from genocide, war crimes, ethnic cleansing, and crimes against humanity.

Moreover, acting under Article 41 of Chapter VII of the Charter of the United Nations, it demands that the parties respect all relevant agreements since there is no military solution to the conflict. Sanctions designation criteria were established, implying “its willingness to impose targeted sanctions in order to support the search for an inclusive and sustainable peace in South Sudan”. The wording of the resolution is clear, meaning R2P in all respects.

In this resolution, 2206 (2015, para. 5–22) the Council indicated its willingness to impose travel bans and asset freezes on individuals and entities designated by a sanctions committee to be established. Travel bans apply to individuals; asset freezes apply to individuals and entities such as government, opposition and militia. A panel of experts was established to support the committee’s work and provide relevant information regarding potential designations of individuals and entities. No list was made in the resolution, but the Council indicated that targeted measures would apply to all those who violated the peace process and the peace, security and stability of South Sudan. The Presidential statement (S/PRST/2015/9) also referred to the intention of imposing sanctions if the peace deal fails.

The human rights situation continued to be extremely grim (see HRC 2015). Violations of human rights and international humanitarian law continued. There have been no serious accountability measures by national actors. No party in South Sudan has held perpetrators accountable (see also SCR/mf 2015c, 4–5).

#### 4.7.1 Heading to the peace agreement – mediation

As discussed, the IGAD-led negotiation was fraught with problems and needed to be rethought. There were efforts to build a so-called IGAD-PLUS: IGAD, the UN, the AU, several non-IGAD African countries (Algeria, Chad, Nigeria, Rwanda, South Africa), China and the Troika, and IGAD Partners Forum/IPF (mainly IGAD's donor partners) to refresh the negotiations and avoid earlier problems regarding member states' different interests. The conflict in South Sudan is a destabilising factor throughout the region, and it is important to have a peace agreement (Johnson 2016, 277). IGAD-PLUS was established in March 2015 after 15 months it first started. It approached mediation on the basis that pressure was needed, and also, the international community should put pressure on parties, and this should be coordinated (ICG 2015, 3–4; SCR/mf 2015c, 4) for an inclusive and comprehensive peace agreement to be achieved (UNSG 2015c, para 2). It has been estimated that IGAD-PLUS may be the last possibility to get an agreement. The process may not be perfect either (ICG 2015, 4, 25).

From the beginning, IGAD mediators had a problem: what kind of an agreement was possible to reach between Salva Kiir and Riek Machar, “a narrow one” or “a proper one” addressing the root causes of the conflict? Rolandsen et al. (2015, 95–98) argue that the attempt to adopt the latter strategy or option shows the less-inclusive approach was pragmatic and more realistic. The inclusiveness problems were related to who should be invited to take part, and consensus on this was not reached. Since inclusivity is related to sustainable peace, the process reflects the challenge in that even choosing the correct parties proved difficult as was discussed earlier. As long as the parties in the conflict continue to opt for military victory, the situation is difficult (see also Bellamy 2015a, 574). The protection of the civilians needs to be the main aim. This choice reflects “ethics of the best choice in the circumstances or perhaps the least damaging choice” (Jackson 2000, 147) and implies pluralist principles.

Mass killing has a purpose, and when that goal is achieved, killing stops. Alternatively, as Bellamy argues (2015a, 569) killing stops because of the military defeat. “Intentional killing” means that the killing of civilians was an intended “matter of policy, strategy or operational requirement”.

Resolution 2223 (2015) in May 2015 was adopted unanimously without significant changes and Council members continued to be very concerned about the situation in South Sudan but not united in how to approach the crisis. Although the UNSC achieved consensus in adopting Resolution 2206, Russia and Venezuela stated reservations. Thus, it remained unclear whether the Sanctions Committee would achieve the required consensus to apply the planned sanction measures.

The US Representative (S/PV.7396, 3) said the adopted resolution, 2206 (2015) supported IGAD mediation by providing a framework for targeted sanctions. The resolution sends a clear message to the parties about what is acceptable and what is not; “parties need to know not only that they will be held to account if they fail to compromise to reach the agreement,

but also that they will be held accountable” if they fail to implement what they have signed. The Representative of China (*ibid.*), said Resolution 2206 sends a unanimous message to IGAD mediators with the hope that the parties take steps towards peace and stability in South Sudan, meaning Chinese acceptance of sanctions.

The Representative of Russia explained its voting (S/PV.7396, 4). Russia voted in favour of the resolution to show the Council’s unity, “in the interest of settling the situation in South Sudan” as being the most important issue. However, “our principled position is known”. South Sudan needs “understanding and unified support rather than pressure and threats which could lead to an opposite result”. The effect of the sanctions would be counterproductive. There is no clear signal from the IGAD and the AU that they would support such measures. Thus, “the implementation of the Council sanctions regime might be difficult and could have a negative impact on the Council’s credibility” (*ibid.*).

The Representative of South Sudan (S/PV.7396) repeated that South Sudan’s opinion was that “a sustainable solution cannot be achieved by imposing sanctions”. If the resolution is meant to be “procedural, aimed at creating a framework for sanctions regime and not actually implementing sanctions, then it amounts to a threat”. He continued that “a threat is meaningful only if it is credible”. The question is “whether the sanctions are a punishment for failure to make peace or an inducement for making peace”?

Further, the Representative of South Sudan (S/PV.7413, 4) noted the Presidential statement (S/PRST/2015/9), in which the UNSC expressed its disappointment in both leaders of South Sudan as they have not come to an agreement but continued fighting and violating human rights and humanitarian law, and reiterated its willingness to impose sanctions on the spoilers of peace:

Indeed, my Government has been engaged in the peace talks in good faith and has accepted various proposals made by the mediators in all rounds of the talks, including the establishment of a transitional government of national unity. Due to his desire for inclusivity in IGAD peace talks, the President of the Republic allowed for the participation of a wide range of stakeholders, including faith-based groups, civil society organizations, youth, women and political parties, so as to ensure ownership and inclusivity of the peace process.

However, the SPLM-IO, the opposition, made unfair demands from South Sudan’s point of view. The Government of South Sudan saw no justification for these demands, and “Therefore, the moral equivalency implied in today’s presidential statement [...] is not correct” (S/PV.7413, 4), thus stressing South Sudan’s sovereignty and sheltering impunity. Both conflict parties were committed to a military solution (SCR/mf, 2015f, 2).

The Security Council Committee pursued Resolution 2206 concerning South Sudan. The Committee, a subsidiary organ of UNSC, consists of all Members of the Council. It is assisted by a Panel of Experts established pursuant to the same Resolution 2206. In August 2015, this Panel of Experts published an “Interim Report of the Panel of Experts on South

Sudan” (S/2015/656). According to the mandate, the Panel (*ibid.*, para. 3) was “to provide information and analysis regarding the implementation of the resolution”. This

includes information relevant to potential designations and information regarding the supply, sale or transfer of arms and related material and related military or other assistance, including through illicit trafficking networks, to individuals and entities undermining political processes or violating international human rights law or international humanitarian law.

Mr. Melet, chair of the Security Council Committee concerning South Sudan, briefed the UNSC of the Panel’s main findings (S/PV.7511). The Panel recommended imposing sanctions on spoilers, as the situation has deteriorated. Supplies of arms and ammunition to all parties of the conflict prolonged the conflict, and the Panel recommended “a complete and general arms embargo on South Sudan”. Because there had not been an arms embargo, it meant that the Government of South Sudan “is free under international law to acquire arms, ammunition and other military equipment” (S/2015/656, para. 68). The Panel reported that “all parties of the conflict had been targeting civilians as part of their military tactics and violated human rights and international humanitarian law” (S/PV.7511, 7). The UNSC should consider, “as a matter of priority, options for criminal accountability and transnational justice in South Sudan for serious crimes committed since the beginning of war” (S/2015, 656, para. 84). The Panel’s recommendation came in three parts: sanctions, arms embargo and human rights and international humanitarian law.

Peace talks broke down in March 2015. There was frustration regarding South Sudan’s political leaders, who were considered egotistical and as forgetting their people (UNSG 2015b). SRSR Ms. Løj and the head of UNMISS (S/PV.7444, 2–4) briefed the UNSC about the ever-worsening situation in South Sudan and repeated that the UNMISS had no mandate to facilitate the peace process, and the international community should find ways to support and help the South Sudanese people as there is a “low level of respect for human life in South Sudan (*ibid.*, 3; see also UNMISS 2015a).

The Representative of South Sudan (S/PV.7444,7) again took up, in the UNSC meeting the negative impact of sanctions and other punitive measures and questioned the equal treatment of both parties of the conflict, pursuing peace requires engaging

the warring parties with a degree of objectivity, impartiality and parity. But rights and wrongs, never one-sided, are also never equal. The risk with moral equivalency is that the wrongdoer is equated with the wronged and that cannot be a basis for finding a truly just solution.

South Sudan needs, the Representative continued capacity-building support, which needs “not be viewed as a means of empowering the Government to be repressive or oppressive but should be seen as a way of developing more responsible and responsive institutions of good governance that are capable of protecting the civilian population and ensuring their general welfare” (*ibid.*).

The human rights situation was very serious in South Sudan throughout spring of 2015 (see SC/11897; SC/11916; SC/11964). The Council got the consensus to designate six military personnel for sanctions in July 2015, three SPLA affiliated and three SPLA/O affiliated (SC/11958). However, the Council was not united on this, the P<sub>3</sub> was for the sanctions; African members of the Council supported these. Russia decided not to prevent the designations, because the AU PSC (Peace and Security Council) supported sanctions, as did the African members of the UNSC. China did not object either. However, an arms embargo and a referral to the ICC were difficult issues because of the division in the UNSC even though the Sanctions Committee recommended them (see SCR/mf 2015d, 17). Although the referral to the ICC divided the Council, it has its place in the Council discussion (SCR/mf 2014c, 2), and mass atrocities were discussed in the UNSC.

The Council had to consider how to approach the difficult situation in South Sudan and especially, how to convince the people of South Sudan that the sanctions were not against them. The reconciliation process and how justice and accountability issues were to be handled were the most important questions (see SCR/mf 2015d, 16). Questions of justice and accountability were discussed to establish a balance between order and justice, sovereignty and human rights; this was related to great power management.

## 4.8 Peace Agreement

In August 2015, the Council (S/PST/2015/16) welcomed the “Agreement on the Resolution of the Conflict in the Republic of South Sudan” (ARCSS), which had been mediated and negotiated by IGAD and IGAD-Plus. The Council called all parties to follow the permanent ceasefire, promised to update the mandate of UNMISS to support implementation of the Agreement, and indicated “its readiness to consider the appropriate measures to ensure the full implementation of the Agreement” and “address any violations or failures of any party to implement its provisions, including through the imposition of an arms embargo and additional targeted sanctions.” The Council indicated the pressing needs of accountability for serious violations and abuses of human rights and serious violations of international humanitarian law (see also UNMISS 2015b).

The negotiations took place in early August, and a draft agreement was prepared by IGAD giving a deadline to the parties by mid-August. Several issues were contested by the government and SPLM/A-IO contested several issues during the negotiations e.g. power-sharing at the national and state level. The draft was signed by the opposition, SPLM/A-IO, while the government refused to sign, and called it a “sell-out”. However, after a discussion with US Secretary of State John Kerry, President Kiir declared that they are willing to sign. Strong diplomatic pressure was put on President Kiir to sign the agreement. At the same time, Council members were negotiating the language related to accountability. Some Council members proposed arms embargo, in any case (SCR/mf 2015h, 5). However, before the Agreement was signed, two SPLM/A-IO generals who, for their part, rejected

Machar's leadership, said they reject any peace agreement signed by Kiir and Machar, as they are "symbols of hate and conflict and [...] obstacles to peace" (SCR/mf 2015h, 6). It could be concluded that the ARCSS was signed under pressure, and both parties undermined it. It was meant to solve the South Sudan conflict, but it was more effective in easing regional tensions (ICG 2016, 1, 5). It could be said to be "the ethics of the best choice in the circumstances" (Jackson 2000, 147).

The main elements in the peace agreement (IGAD 2015) are:

- a transitional government of national unity (TGoNU);
- national elections after 30 months of transitional period;
- national-level power-sharing between Government, South Sudan Armed Opposition, former detainees, other political parties;
- states – where the heaviest fighting had occurred – and in seven other states the positions were divided a bit differently;
- the establishment of Juba as a demilitarized zone;
- the establishment of a joint monitoring and evaluation commission;
- the formation of a Hybrid Court for South Sudan (HCSS) to investigate and prosecute individuals accused of genocide, crimes against humanity, war crimes and other violations of international law and applicable South Sudanese law in the period of Dec 15 to the completion of the transition period;
- the formation of a Commission for Truth, Reconciliation and Healing (CTRH) to establish a record of the violations of human rights and the rule of law between July 2005 and the date of the agreement was signed.

Funding, including for the Hybrid Court, would be determined by legislation of the transitional government that establishes these institutions (IGAD 2015; see SCR/mf 2015j, 5).

The Agreement consisted of Chapters "Transitional Government of National Unity of South Sudan" (Chapter I); "Permanent Ceasefire and Transitional Security Arrangements" (Chapter II); "Humanitarian Assistance and Reconstruction" (Chapter III); "Resource, Economic and Financial Management Arrangements" (Chapter IV); "Transitional Justice, Accountability, Reconciliation and Healing" (Chapter V); (IGAD 2015).

As stated earlier, how the transitional arrangements, reconciliation process and the way in which justice and accountability issues are to be handled are the most important questions in the future of South Sudan (see SCR 2015, 16), meaning practices of ending impunity. This agreement's transitional justice program – i.e. the Truth Commission and the Hybrid Court – relates especially to Chapter V of the Agreement.

The entire Agreement could be approached from the point of view of human rights and human rights practices. Many peace agreements have focused on human rights, meaning they have emphasised ratifying international human rights instruments, truth and reconciliation commissions, and different justice mechanisms. This can be interpreted as



such that grave human rights and humanitarian law violations are serious issues in internal conflicts; human rights violations can be symptoms of conflicts, and/or they can be seen as causes for conflict. In any case, they are serious matters, and international human rights standards<sup>22</sup> can be used to uphold accountability, while truth commissions and justice mechanisms address reconciliation and impunity. However, since human rights issues are related to justice issues, this can be seen to be problematic in peace processes, in terms of whether it is a question of peace or justice, or peace and justice (a narrower peace agreement vs. a proper one). One approach is to see this as an ongoing question which needs to be dealt with if a just and sustainable peace is the objective. One more problem related to human rights in peace agreements is how human rights are, and can be, understood and interpreted in different ways by different actors (Bell 2006, *passim*). This suggests that pluralism and solidarism exist at the same time.

What is the role given to human rights in ARCSS, what is the need for them, and what type of human rights violations were committed during the conflict? In South Sudan, the question is of the most serious crimes, mass atrocities committed by all the parties in the conflict (see e.g. AUCISS 2014; AUCISS 2014a; UNMISS 2015b). ARCSS could be approached as an agreement concerned with human rights since all the chapters are human rights issues – civil and political rights (Chapter I), social, economic and cultural rights (Chapter IV), and right to self-determination (see also Bell 2006, 3).

Demands for justice and accountability have been strong and emerged from different parts of South Sudan society and the international community, the UN, the UNSC and the AU repeatedly (see AUCISS 2014; UNMISS 2015b).

Chapter V of the ARCSS refers to the Hybrid Court of South Sudan, HCSS, to be established to combat impunity; it should consist of both South Sudanese and African (non-South-Sudanese) judges, lawyers and administrative staff. The AU will have significant role; Russia has criticised why and how the UNSC and the UN have a role in this, since the role has been reserved for the AU (see S/PV.7532, 2). The HCSS will have jurisdiction over national jurisdiction. The ARCSS calls for a Truth Commission to be established. AUCISS (2014, para. 1165–1169) recommends this commission with “a mandate to investigate human right violations [it] should drive at national peace and a reconciliation process [to] lead to truth,

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22 AUCISS (2014, para. 1144, 375) recommended that “the South Sudan Government ratify all major international and regional human rights instruments, including those related to vulnerable groups like women and children”. South Sudan ratified the Convention on the Elimination of All Forms of Discrimination against Women in 2015 and the Convention on the Rights of the Child in 2015, but it has not ratified the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (CESCR), and the African Charter on Human and People’s Rights (ACHPR). However, major articles of the Universal Declaration of Human Rights (UDHR) have received a status which is binding under customary international law. Likewise, prohibitions against torture, cruel and degrading treatment (CAT), slavery, recruitment, use of children in hostilities, and arbitrary detention are binding for all parties of the conflict. Some of these constitute international crimes, war crimes or crimes against humanity. The Transitional Constitution of South Sudan refers to fundamental rights: “life, human dignity, equality and non-discrimination, liberty and security of the person, freedom from arbitrary arrest and detention, fair trial and equal protection of the law”.

remorse, forgiveness and restitution” (ibid., para. 1166). Justice and lasting reconciliation should be achieved and have a connection with “hybrid” mechanisms. Justice and peace should be seen as complementary, but the Commission recommends that they could also be seen as sequencing: peace first, then justice. Sequencing can offer a better choice that could further justice in South Sudan, thus suggesting “ethics of the best choice” (Jackson 2004, 147).

The UN has defined “justice”, “the rule of law” and “transitional justice” as means to further e.g. human rights, and protect people from fear and want, meaning human security (UNSG 2004a, para. 5). For the UN, “justice” refers to (ibid., para. 7)

...an ideal of accountability and fairness in the protection and vindication of rights and the prevention and punishment of wrongs. Justice implies regards for the rights of the accused, for the interest of victims and for the well-being of society at large. It is a concept rooted in all national cultures and traditions and while its administration usually implies formal judicial mechanisms, traditional dispute resolution mechanism are equally relevant.

Different tribunals can contribute justice to victims and combat impunity as does the ICC. Truth commissions can be important when complementing a quest for justice and reconciliation, since this is a victim-centred approach. Justice should not exclusively focus on the perpetrators, but also on those who are their victims (ibid., 1–2), as is the aim of R2P.

The legal system in South Sudan faces many problems. For example, there are no legal personnel in the judiciary since a political decision was made that only people who knew English qualified for the jobs, even though those with legal training spoke mainly Arabic. As for other problems, there is a tradition of “summary justice” and a lack of due process (AUCISS 2014a, para. 126–127). In terms of the type of accountability needed and wanted, much depends on how it is understood. Through interviewing a large number of people, AUCISS determined that accountability is related to impunity. Impunity was not, however, understood in terms of criminal justice. Does criminal justice bring an end to impunity? Violence, accountability, impunity, reconciliation, and justice are all nonetheless related (ibid., 133; 157–164). There were different views on the meaning of accountability; it could be understood either narrowly or broadly. Truth is central to accountability and not only in terms of punitive justice: “We cannot just follow the African way of reconciliation – let the past go – we have to make sure there is truth and accountability” (ibid., para. 134). Also, “[i]mpunity is related to the rule of law. The problem is weak institutions” (ibid., para. 141). However, the major problem was that there are no institutions. So, did capacity-building make sense?

Related to reconciliation, there are different understandings. A difference can be made between “popular and elite reconciliation” and between “pragmatic and principled reconciliation” whether popular (local communities) or elitist. Popular reconciliation in the traditional sense can be described as pragmatic and temporary. In terms of the elite’s reconciliation, AUCISS blames the CPA and those who rejected the possibility to deal

with past failed reconciliation and construct a national project for the South Sudan elite (see AUCISS 2014, para. 144–154).

Debates over impunity are also challenging (AUCISS 2014a, para. 157–164). There are many victims and many perpetrators, and these overlap. There should be a compromise approach to balancing the need for criminal accountability, and at the same time, understanding that South Sudan is not able to prosecute all those responsible for grave human rights violations. Deng and Willems (2016, 9) thus recommend public support for Chapter V of the ARCSS and a public discussion on how best to deal with justice and accountability issues in international crimes.

#### 4.8.1 Renewal of the UNMISS mandate to implement the peace agreement

The Council renewed and revisited the UNMISS mandate in Resolutions 2241 (2015) and 2252 (2015). Since signing the agreement, the ceasefire had been fragile and violated. In November, transitional security arrangements were signed for Juba and other key towns, and in October President Kiir ordered the establishment of 28 states instead of the ten existing states. The decision made the implementation of ARCSS even more difficult. The opposition was against it, as it violated the peace agreement, and confidence did not increase between the parties (SCR/mf 2015g, 7–8).

The Council had to consider how to get the parties to implement the peace agreement. Resolution 2241 (2015) was adopted in October 2015, with 13 in favour, two abstaining (Russia, Venezuela). The Council (S/PV.7532) discussed the UNSG report (2015c, para. 34–35, 44, 53, 64, 75) regarding “the protection of civilians, human rights monitoring and reporting, challenges to the administration of justice in accordance with the international human rights standards given the collapse of justice institutions, violations of the status-of-forces agreement, international humanitarian law, and how the culture of impunity must end and the perpetrators must be held accountable”. The UNSC was acting under Chapter VII of the UN Charter and

considered all appropriate measures [according to] resolution 2206 (2015) against those who take action that undermines the peace, stability and security of South Sudan, including those who prevent the implementation of the agreements; Protection of civilians; Monitoring and investigating human rights; Creating conditions conducive to the delivery of humanitarian assistance; Supporting the Implementation of the Monitoring and Verification Mechanism (MVM)/Ceasefire and Transitional Security Arrangements Monitoring Mechanism (CTSAMM); Supporting the implementation of the Agreement.

The Representative of Russia (S/PV.7532, 2) explained, “Russia decided [...] not to stand in the way of the Security Council’s adoption of the resolution”, but did not give their vote in favour either. Russia could not support the language used regarding sanctions against

South Sudan, as an ultimatum. “The use of such language in the resolution is inappropriate, as the resolution’s main purpose is to supplement the mandate of the peacekeeping mission with tasks aimed at facilitating the peace process, rather than to frighten the parties with the ‘club’ of sanctions”. South Sudan needs “support and encouragement to implement the agreement”, not threats. Neither can Russia support any assessment of the Hybrid Court in South Sudan, as under the peace Agreement and the decisions of the African Union, “the establishment and activities of that judicial body are the exclusive prerogative of the African Commission”. Russia is also against “the use by the Mission of unmanned aerial vehicles (UAVs)”, as South Sudan is against their use. This does not respect South Sudan’s sovereignty. In the end, Russia remarked how some Council members had prioritised their own national interest over that of South Sudan.

The Representative of China explained (S/PV.7532, 3) that China voted in favour of newly adopted Resolution 2241 (2015) in adjustment of the UNMISS mandate. After the ARCSS, the peace process in South Sudan is developing. China is satisfied with this and supports what the African Union (AU) and IGAD have done in the peace process. All parties should honour the ceasefire and support the role of IGAD. China referred to sanctions, saying that the Security Council should be cautious and prevent confrontation and conflict. China stated that different concerns in the Council, with regard to the draft resolution were not met. It would have been good to reach a consensus and “ensure the successful implementation of the resolution”.

The Representative of the US (S/PV.7532, 4–5) referred to the “horrific” human rights violations against civilians, and in particular against women and girls. The adoption of Resolution 2241 (2015) meant that UNMISS has tools to support implementation of the Agreement and end the cycle of violence in South Sudan. The mission’s “core tasks are protecting civilians, monitoring and investigating human rights abuses and violations, and creating the necessary conditions in which humanitarian assistance can reach people”. This resolution reflects, as the Representative of the US stated, the consensus achieved at the high-level meeting on South Sudan. The resolution “expresses our [...] commitment to maintain pressure on both sides, neither of which has fully complied with its ceasefire obligations. That is fully consistent with the Peace and Security Council of the African Union in its communiqué of 26 September”; “Justice is not a choice”; it must be fulfilled, the US stressed.

The Representative of South Sudan (S/PV.7532) welcomed a renewal and extension of the mandate of UNMISS. South Sudan reminded the Council of the basic principles of peacekeeping: impartiality and consent of the parties. Accordingly, South Sudan hoped the Council looked for the consent of the Government of South Sudan when implementing the mandate just adopted. It was very unfortunate, said the Representative of South Sudan, that the UN did not consult the South Sudanese government first.

South Sudan referred, in particular, to the unarmed unmanned aerial vehicles (UAVs), “to invite controversy and potential disagreement and hostility, when harmony and

cooperation are what the situation calls for”. These undermine South Sudan’s sovereignty. Achievement of the peace agreement was greeted with gratitude, but (S/PV.7532)

We call on the Council, the international community and all the friends of South Sudan to support the parties rather than making threats and proposing punitive measures, which, as we have repeatedly stated, only aggravate the situation and may tend to harden positions in the direction of confrontation rather than cooperation.

The UNSG evaluated (UNSG 2015d, 1) the mandate of UNMISS “in light of the political and security situation in South Sudan” and provided recommendations, including resource requirements for UNMISS to fulfil its mandate to support the implementation of the ARCSS (see also UNSG 2015e; S/PV.7570).

The UNSG provided a conflict analysis of the situation (UNSG 2015d, para. 4–18) and found political, security, institutional, human rights, rule of law, humanitarian and economic challenges. Priority objectives for the mission in support of the peace process – core pillars of the existing mandate, while given priority to supporting the peace agreement – would include *political support* (para. 20–24), support for improving the *security situation* (para. 25–36), including e.g. support and *specialised capacity-building* for the joint integrated police units.

This would mean again supporting the government, although the situation is not any better than when Resolution 1996 (2011) was authorised (see also S/PV.7570). The *protection of civilians* (para. 37–47) would remain the priority, and *human rights*, especially in terms of

monitoring, investigating, verifying, and reporting on the violations of human rights and international humanitarian law, with a particular focus on gross violations of human rights, violations against children and conflict-related sexual violence; to support the TGoNU in ensuring the compliance with international human rights standards; to support CTRH and HCSS (para. 49–57); to support humanitarian assistance (para 59–61) and rule of law and security institutions (para. 62–68).

The mission needs more resources to implement these tasks. TGoNU would like to have a strong institutional capacity-building mandate as in 1996 (2011) (S/PV.7570, 5). The UNSG’s proposed adjustment to the UNMISS mandate was to focus on supporting the main institutions of transition, targeted support, with other mandated tasks (S/PV.7570, 3). President Kiir’s order (UNSG 2015e, para. 73) establishing 18 additional states has caused inter-communal tensions and questions about these new states’ borders. The UNSG urged the President to defer action on those issues until the TGoNU has been formed and a national dialogue has been held.

However, as the Council knew of the continuing grave human rights violations, what kind of a mandate should it authorise? What would be the right thing to do, in light of pluralism and solidarity?

Resolution 2252 (2015) to renew the UNMISS mandate was adopted in December 2015, with 13 votes in favour, and Russia and Venezuela abstaining – the same result as

in Resolution 2241 (2015). The Council was concerned about the security, human rights and humanitarian situation and protection of civilians in South Sudan. However, there were differences in how to approach the situation. Some members supported the use of UAVs. Russia and Venezuela expressed their reservations on this, and South Sudan strongly objected. They have not yet been used, but their use has been authorised according to Resolution 2241 (2015). The use of sanctions is still another controversial issue. Some members supported an arms embargo as the Sanction Committee recommended, while others (Russia, Venezuela) said that since some progress has been made, such a measure should not be engendered (SCR/mf 2015g).

Russia did not want to prevent adoption of the Resolution 2252 (2015), just as it did not want to prevent adoption of Resolution 2241 (2019). As such, it offered an explanation: “its sponsors did not take into consideration a number of serious concerns on the part of the Russian delegation and some other Council delegations” (S/PV.7581, 2). The wording of the resolution was inappropriate, “as an ultimatum related to sanctions is counterproductive”. Using sanctions instead of having serious political and diplomatic discussions, is not acceptable. Russia was also against the Hybrid Court evaluations, as it belongs to the AU, and the possible use of UAVs, in disregard of “the objections of the Government of South Sudan” is not acceptable. Russia stated that holding pen could mean that national interest are more important than other interests, this very much effects the Council’s unity (see also Ralph & Gifkins 2017).

The Representative of the US (S/PV.7581, 4) adopted the resolution and expressed the country’s commitment to sanctions. UNMISS should have all the “technological capabilities” it needs to fulfil the mission. The resolution also reflects that accountability for human rights crimes and abuses, providing access to justice for victims, represents a central part of building peace. The Hybrid Court would be important, as the impunity must end if peace and security are to be established in South Sudan.

To conclude, in this chapter I conducted an empirical analyses of the UNSC’s practices in responding to the situation in South Sudan. The reproducing practices and changing practices of R2P of *state-building*, *protection of civilians*, *targeted sanctions*, and *mediation practices* resulting in *the peace agreement* were analysed in the normative framework of R2P to determine whether these practices are, in fact, R2P-competent practices in terms the ethical reasoning which refers to the political debate at the UNSC.

The political debate and related practices were analysed in light of pluralism and solidarism that created a different moral space where ethical reasoning took place. The practices of state-building, the protection of civilians, targeted sanctions, and mediation are the UNSC’s answer to preventing and responding to mass atrocities in South Sudan. When using the “deeds to words” approach, I analysed how the aforementioned reproducing and changing practices constitute R2P and what kind of international society they produce when discussed with sovereignty, human rights and great power management, basic principles of the R2P and primary institutions of international society.



R2P has been defined as a procedural institution. R2P pertains to how actors behave towards one another in both conflict and peace in a repetitive and regulative sense (see Holsti 2004). Procedural institutions “exist” between primary and secondary institutions (see Figure at the end of Sub-chapter 2.3.3.3 or Chapter 5), implying how R2P and the UN, the UNSC and the ICC are mutually constitutive. In this frame, R2P as a procedural institution also has both reproductive and changing qualities. As Knudsen (see e.g. 2018a) has presented, “continuity” refers to reproduction of the constitutive principles; “change” pertains to changes in the practices that reproduce the constitutive principles.

## 5 Conclusions

“It has taken a desperately long time for the idea to take hold that mass atrocities are the world’s business: that they cannot be universally ignored and that sovereignty is not a license to kill.”

Gareth Evans<sup>1</sup>

The research assignment for this study was how to respond to mass atrocities in light of the responsibility to protect (R2P) as a United Nations Security Council (UNSC) practice, with the South Sudan conflict providing the research material. The time period for the research was the South Sudan conflict discussions in the Security Council between 2011 and 2015. South Sudan can be called a clear R2P case, as it is manifestly failing to uphold its responsibility to protect.

My research question was how UN and UNSC practices constitute R2P and how these practices may change or maintain primary institutions of international society and thus effect the nature of international society. The theoretical contribution is suggested to concern the role of secondary institutions in the English School theory of international society and the empirical contribution of UNSC practices in preventing and responding to mass atrocities. This study builds on earlier ES research which has shown that secondary institutions and primary institutions are considered mutually constitutive, thus providing a possibility for both continuity and change. Analysing how secondary institutions work, and identifying processes, possibilities and problems, makes their role in international society clearer.

I have argued in this research that the UN, UNSC and ICC – as secondary institutions of international society – contribute to the fundamental aim of maintaining international peace and security by constituting R2P. The basic principles of R2P, defined in this study

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<sup>1</sup> Evans 2008, 11.

as a procedural institution, are human rights, sovereignty and great power management which are at the same time primary institutions of international society, and equality of people, mutual recognition of sovereignty, non-intervention, special rights and duties of international peace and security of great powers as their constitutive principles, respectively. Thus, R2P is meaningful from the perspective of peace and security. As R2P concerns human rights and grave human rights violations and mass atrocity prevention, it is directly linked to peace and justice, the idea of humanising international society and humanitarisation of sovereignty.

Further, I have argued that UNSC practices to prevent and respond to mass atrocities in South Sudan embody a reconceptualisation between the principles of human rights and sovereignty, addressing the implied moral imbalance between them, and thus contribute to human security by protecting civilians. This relates to great power management, as different primary institutions are intertwined and mutually constitutive. This implies an interplay between pluralism and solidarism by reflecting different possibilities for moral action and explaining different “outcomes”. R2P is not a settled practice, but rather a set of contested practices. These practices may change over time; they may change as a result of debates about them. The UNSC has a discursive function since it is a place for political debates about how to address threats to peace and security. The UNSC practices of R2P express its intention on how to prevent and respond to mass atrocities.

Institutions are understood as practices. R2P depends on its working of the primary institutions of human rights, sovereignty and great power management as do the UN, UNSC and the ICC. Procedural institutions are defined as reflecting behaviour during conflict and peace, referring to regulative and repetitive functions between actors. Holsti has argued that R2P could disappear without causing problems for other institutions and the working of international society. However, although this study defines R2P as a procedural institution, it is suggested that it also has qualities other than those mentioned, namely reproductive and changing effects, too. The argument that R2P could disappear without much trouble in international society could be understood by the so-called “nothing new” argument in debates about the meaning of R2P, as R2P is based on already-existing norms and rules and already-existing practices at the UN. However, R2P as a political principle in terms of the four crimes is important and related to the ICC and impunity. I suggest, on the contrary, that R2P has reproductive and changing effects but can still be based on other primary institutions and their constitutive principles.

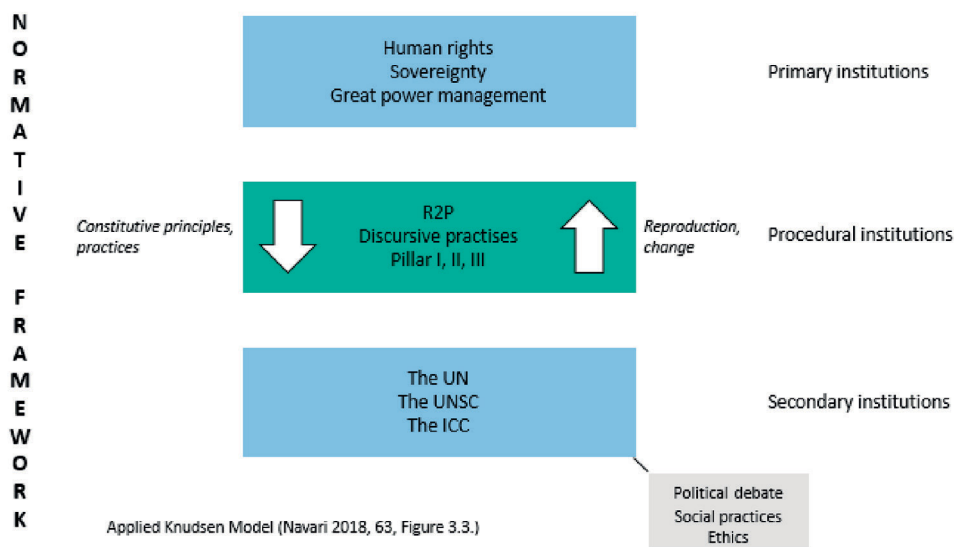
The discursive practices of R2P, Pillars I, II, and III, constitute R2P, the R2P discourse, and related UNSC social practices – already-existing – do that also. Discursive and social practices of R2P are mutually constitutive.

R2P as a procedural institution of international society means that, increasingly, a certain kind of behaviour is expected from the actors. R2P has developed a normative framework (Chapters 2, 3) in which UNSC practices must be analysed (Chapter 4). The already-existing practices may gain a new meaning in this framework; they may reproduce

or change the primary institutions and thus effect the nature of international society. This approach is called a “deeds to words” approach, according to Orford. This is a different approach than a “words to deeds” approach, meaning the implementation problems of the R2P: how successful or unsuccessful the UN has been in fulfilling its tasks. On this approach, “deeds to words”, used in this study, implementation problems have come up indirectly.

When UNSC practices are analysed in this normative framework, it can also be considered whether they can be viewed as R2P competent. This can be done by means of ethical reasoning following the ideas of Reus-Smit, Frost, Crawford, Walzer, Ralph and Gifkins. Ethical reasoning takes place at UNSC meetings. Ethical reasoning was considered through solidarism and pluralism by identifying pluralist and solidarist commitments in UNSC debates concerning UNSC practices in South Sudan. R2P-competent practices were implemented to harmonise competing norms of international society regarding cosmopolitan consciousness. The language of human rights can be argued to reflect cosmopolitan consciousness, while human rights treaties can be argued to be a codification of these international ethics. Ethics and ethical arguments are necessary when considering reproduction or change in international society. Practices may change because of ethical arguments and ethical reasoning.

The figure below aims to clarify the research framework.



R2P was discussed in terms of pluralism and solidarism, as they both define different moral frames; there were different possibilities for moral action. I have suggested that pluralism

and solidarity exist at the same time, in other words, order and justice are intertwined and related.

From the analysis of UNSC practices in South Sudan – *practices of state-building, protection of civilians, sanctions regime and peace agreement* – it can be noticed how the UNMISS mission mandates were changing, which reflected changes occurring in the South Sudan conflict and UNSC practices. These practices also imply that Pillars I, II and III of R2P and their practices were used when needed, not in succession. This was how the UNSC responded to the South Sudan conflict, constructing R2P and effecting the primary institutions.

As such, these practices will not signify whether they are R2P-competent or not. That all Pillars, I, II and III, were used can be interpreted to mean, as does Bellamy that the UNSC has recognised R2P to mean much more than the potential use of force according to Pillar III (cf. Libya), and these practices reflect possibilities provided by the UN Charter in Chapters VI, VII and VIII. If interpreted from the R2P-competence point of view, the results are slightly mixed.

It could be specified that state-building, the idea of a responsible, sovereign state, different practices of protection of civilians, sanctions regime, and mediation process which ended at the peace agreement (ARCSS) clearly showed how the practices of the UNSC and ICC constituted R2P and reflected both pluralist and solidarist moral frames meaning that it was possible for the UNSC to reflect cosmopolitan consciousness. Both pluralist and solidarist arguments were used at times by all at the UNSC.

The UNSC was able, at least to some extent, to harmonise pluralist and solidarist positions. The UNSC faced a situation: to protect state sovereignty or to protect human rights? It clearly tried to protect human rights and civilians and tried to build a responsible sovereignty, thus emphasising sovereignty as responsibility. For the UNSC, state-building was in a way a natural starting point and a continuation of its earlier policies. Also, stressing Pillar I of R2P means less interventionist thinking.

When the situation in South Sudan changed dramatically in December 2013, so did the UNMISS mandate from state-building to the protection of civilians as its main aim. The UNSC did not support the perpetrators, but it *took sides* by accusing both parties in the conflict of alleged mass atrocity crimes and demanding accountability. The sanctions regime for South Sudan could be established after lengthy discussions reflecting pluralist and solidarist sentiments. South Sudan was of the opinion that stressing the moral equivalency of both parties in the conflict was not correct, and thus emphasised the principles of sovereignty and the sovereign impunity of South Sudan.

*New UNSC practices, new emerging problems.* When the violence intensified in December 2013, UNMISS answered the situation, the rapidly developing humanitarian crisis, by setting up protection sites within its bases and opening its gates to protect civilians. This was an emergency and needed action, and that is what UNMISS did; it did put people first. This was not a routine thing to do, as it meant the rules were broken; it risked the

relations with the government. At that moment, it was an ethical thing to do, although there are difficulties to come. At the same time, the PoC mandate was changed to an R2P mandate to protect civilians. First, it was a question of protecting civilians, then it changed to a mandate to protect the population. The question was of more serious matters, protecting populations against mass atrocities. This, of course, meant problems in managing consent between UNMISS and the South Sudan government. Pillar II practices of assistance and capacity-building were changed to Pillar III practices of “responsibility to take timely and decisive response”. The UNSC decided to protect civilians, not perpetrators. It could also be said that human rights supersede sovereignty with the help of great power management.

However, the UNSC faced its limits, as it was not possible to refer the South Sudan situation to the ICC, which had been possible twice, in the Darfur and Libya cases, while it also was not possible to impose an arms embargo (successful e.g. in Côte d’Ivoire) because of Russia and China, P2 positions. Nevertheless, sovereign impunity still exists, but it is not intact. The peace agreement achieved, ARCSS, was promising if read from the point of view of human rights and R2P. There was accountability and putting an end to impunity, but not that promising if read from the point of view of a power-sharing document between two parties. The peace agreement tried to consider accountability, ending impunity and reconciliation, as it is not possible to achieve sustainable and inclusive peace without addressing accountability. However, it was stated that the peace agreement was imposed from the outside. The peace agreement was argued to be more significant for regional security than to South Sudan security. However, referral to the ICC was discussed openly at the UNSC, that mass atrocities were committed by both sides of the conflict. So, the UNSC constructed R2P in a way where its legal consequences were also considered. These actions had their effect on primary institutions of human rights, sovereignty and great power management thus being mutually constitutive.

*Were the UNSC practices R2P competent?* How did the UNSC define the problems? The description of the South Sudan situation as a post-conflict situation was perhaps not the best one, but it was a natural one. It was a continuation of the development after the CPA, to support the new independent country in the spirit of Pillars I and II of the R2P, to build a responsible, sovereign country and stress the state’s own responsibility for its people. The other interpretation could have been, according to pluralism, to support South Sudan’s independence by bolstering state-building efforts to create order, imposing the great powers’ strong political wills on local parties and using coercion to get advantages that were possible to get.

When the fighting started in December 2013, the Council made ethical choices in that it decided to protect civilians (safe sites), refocus the mandate and search for ways to address accountability to reflect justice and solidarism. Again, however, the peace agreement was achieved by stressing order, although the justice aspect was not ignored in the peace agreement. According to pluralism, this peace agreement was not the best one, but the one that could be achieved at the time.



Determining what to do, what is the right thing to do, and what may work are related to the definition of the problems. If mass atrocities were committed by both parties, the right thing to do was to refocus the mandate of the UNMISS. It was not politically wise, since it caused problems between the Government and the UNMISS. The Government felt insulted since the UNSC also accused the Government itself of committing mass atrocities. The UNSC discussed the issue openly, along with how the UNSC should respond to what happened. Human rights superseded sovereignty, with the help of the great powers, in spite of a P<sub>3</sub>–P<sub>2</sub> divide, but it was not decisive. Impunity was not bypassed, as it is not acceptable in international society.

The principles that guided the UNSC practices were related to previous issues and could be evaluated according to pluralist and solidarist principles. R<sub>2</sub>P puts the people first, defines sovereignty as responsibility, stresses human rights and human security, and thus reflects solidarist sentiments. These principles were seen to be present most of the time, in most discussions, and they framed the discussions. Thus it could be said that they were R<sub>2</sub>P competent. Nonetheless, pluralist principles were also present. These became apparent when sovereign impunity was discussed. The Council had different opinions of e.g. sanctions, while the ICC was included in the discussions. Thus the UNSC provides a place for contestation and deliberation of different norms. However, there was no referral to the ICC, no arms embargo. It seems that a limit was reached here, and here the P<sub>3</sub>–P<sub>2</sub> divide was decisive. In Libya and Côte d'Ivoire, R<sub>2</sub>P meant e.g. regime change, which was definitely not R<sub>2</sub>P competent but may have had its effect in other cases.

How can capacities and obligations be considered? Capacities can be under- or overestimated in relation to obligations. Capacities and obligations were not in balance, in no way could South Sudan do what was expected of it; the UNMISS could not implement its mandates, they were almost “impossible mandates”. This discrepancy creates too many hopes and disappointments and explains, from their part, how the UNSC and peace operations failed to provide protection. Situations are complicated, they change quickly, mandates are complicated and demanding, sometimes wrong, resources are limited, and interpretations of what should be done are different. This can also explain some of the failures or unsuccessful operations. Also, the mandates are complicated and overflowing because they reflect what the situation would require.

*Were some UNSC practices not fit for the purpose?* A tentative answer could be that the state-building practices were such, since the situation was initially determined in a wrong way, or that the peace mediation process was not the best possible one. Alternatively, these practices could be interpreted to signify the best option given the circumstances in the spirit of pluralism. Nonetheless, as they were not fit for the purpose, they were not R<sub>2</sub>P competent. In the South Sudan conflict, as in other conflicts, there are many actors and groups, both armed and unarmed. This kind of approach privileges states, yet the aim is good: a sovereign responsible state is good for all. However, this is a problem and challenge for the UN, for R<sub>2</sub>P and for international society.

With the concepts of pluralism and solidarism, it was possible to analyse and understand the UNSC R2P practices and approach to the South Sudan conflict. Pluralist and solidarist principles were present in UNSC debates. They addressed the imbalance between principles of human rights and sovereignty and thus contributed to human security by protecting civilians. The UNSC practices provided a framework to address mass atrocities. The UNSC, as a secondary institution of international society, contributed to the aim of the UN by constituting R2P. The basic principles of R2P, human rights, sovereignty and great power management are at the same time primary institutions of international society. Primary institutions are reproduced and transformed by secondary institutions; secondary institutions make them possible, while primary institutions shape the secondary ones, as I have argued echoing Knudsen. This means that the UN, UNSC and ICC reproduce and change human rights, sovereignty and great power management, make them possible and human rights, sovereignty and great power management shape the workings of the UN, UNSC and ICC. R2P requires a solidarist framework, and the practices of the UNSC mostly reflect the solidarist sentiment, not forgetting the pluralist sentiment. This implies an interplay between solidarism and pluralism, reflecting different possibilities for moral action and explaining different outcomes and giving an idea of how the UN and UNSC work.

A normative justification for the R2P is its concern for universal human rights, human security and sovereignty as a responsibility. The state has the primary responsibility to protect its population from atrocity crimes according to Pillar I of R2P, but often states themselves are committing these mass atrocities. According to Pillar III of R2P, in these kinds of situations, the international community should act “in a timely and decisively manner” and, according to Pillar II of R2P, assist states in fulfilling their responsibilities. Thus, there are the two norms or principles of international society – human rights and sovereignty – are at the centre of the discussion. Nevertheless, R2P represents more than the implementation of practices of protection, as it also questions the legitimacy of the actor and thus effects the nature of international society. Normative developments the UN and UNSC make to the nature of international society should be evaluated in the long run the transformation process is slow but visible, as seen from this research.

Some if not most of South Sudan’s statements in the UNSC discussion could be interpreted as hypocritical, especially those related to human rights. Echoing Walzer and Crawford, I argue that hypocrisy can also be interpreted to indicate moral knowledge, while lies told show the limits of moral action or justice. They are part of ethical international relations, as they show what is acceptable and what is not. They can also produce something good, as they are public statements which show that the South Sudanese have committed themselves to moral human rights talk, and these can signify discursive openings for normative change. There is a strong demand for justice in South Sudan. If we are of the opinion that words matter, then words should be taken seriously.

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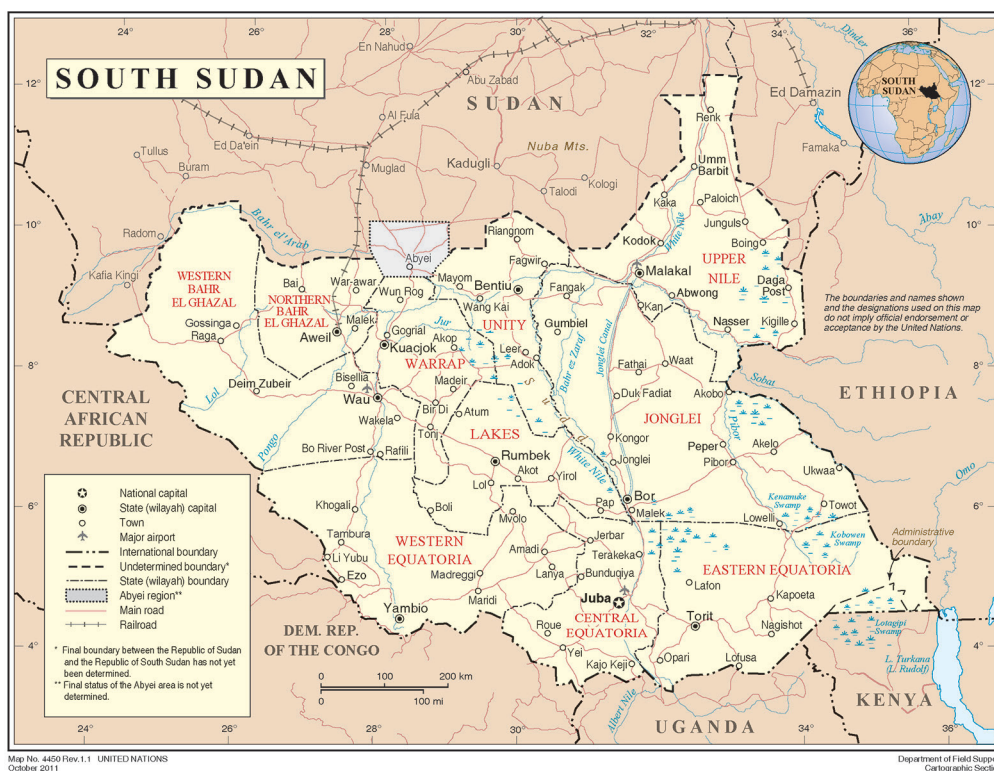


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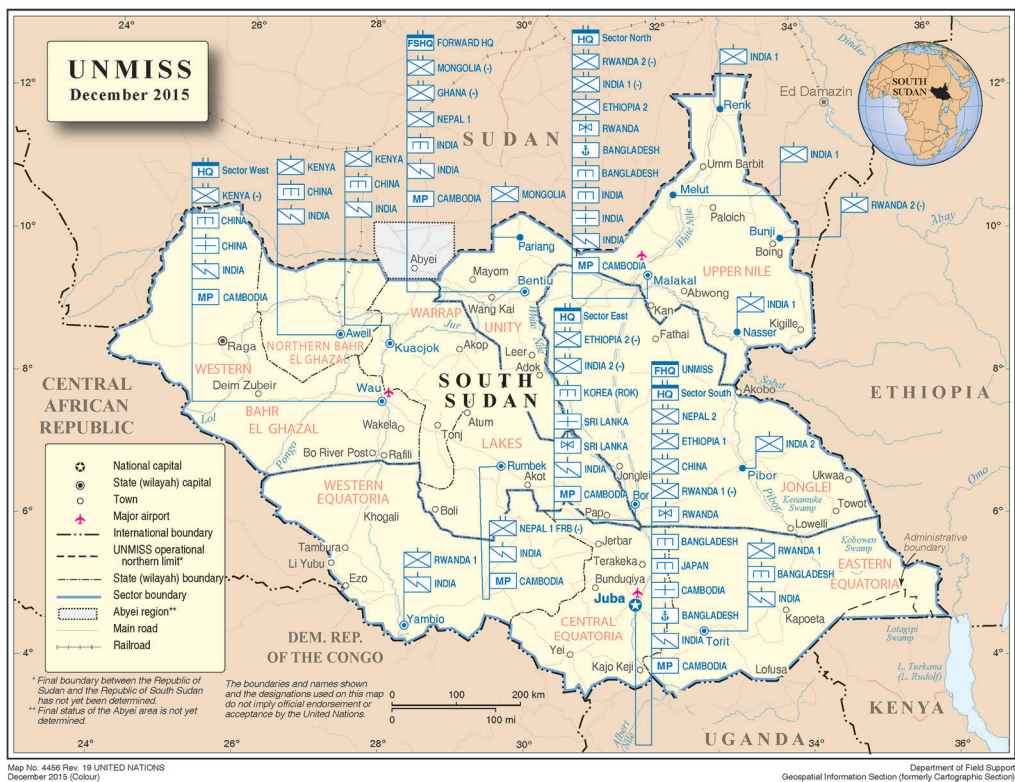


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## Appendix



Map of South Sudan



Map of UNMISS





